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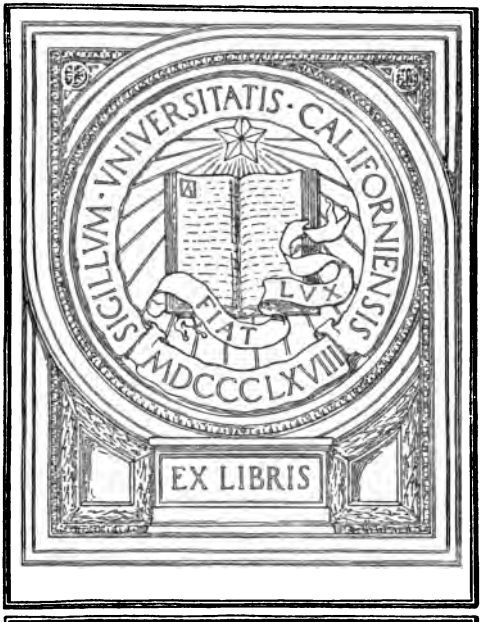
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A PRACTICAL GUIDE TO THE GAME LAWS

A PRACTICAL GUIDE

TO

THE GAME LAWS

BY

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PREFACE.

THE reader should understand that this book is not intended as a work on the Game Laws for legal practitioners, but simply one in which an attempt has been made to illustrate what may be considered interesting as well as somewhat instructive to preservers of game and sportsmen generally on questions affecting them from time to time under such laws. Undoubtedly many people are interested in sport and their rights arising in respect of it, and a hazy conception of what the law on the subject actually is, very often causes some anxiety, coupled sometimes with a certain amount of vexation which might with a little consideration be avoided if reference were made to a practical work on the subject.

As gamekeepers and police also are often in serious doubt as to their respective powers, rights and possibilities under the Game Laws, in view of their rather complex nature, frequently having to act on the spur of the moment, it is hoped that a perusal of this small book may be of some little assistance to them also.

The Editor desires to tender to E. R. Pratt, Esq., of Ryston Hall, Norfolk, his sincere thanks

for the many valuable suggestions kindly offered by him, and for allowing to be embodied much information written by him for the Game Guild and other Associations with which he is so intimately connected.

Also to acknowledge the indebtedness to, and assistance received from, the learned Editors of *Stone's Justice's Manual*, and Oke and Warry on *The Game Laws*, for the many references made to their valuable works.

1 Redwell Street, Norwich,
August, 1907.

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THE GAME LAWS.

BEFORE dealing with the present Game Laws, it will perhaps be well to give a short history of the Game Laws of the past, so far as they affected this country, partly because they are of interest, and because the condition of the country under old laws has completely lapsed from the memory or knowledge of this generation.

When William the Conqueror established himself here, he undoubtedly brought with him the fondness for sport in which he had been educated in Normandy, and which has been transmitted to Englishmen in a more moderate form down to the present time. With a cruel indifference for the rights of individuals, he did not hesitate to depopulate whole tracts of country in order to add to his royal chases, Succeeding kings pursued the same course of tyranny, and King John carried the principle still farther, when at Bristol, in 1209, he laid his total prohibition on the pursuit and destruction of all game, and, in the language of Matthew Paris, *Capturam avium per totam Angliam interdixit.*

The Game Laws and the rights attaching to them were, however, viewed by other authorities in various lights, and Sir William Blackstone, when dealing with the subject (2 Bl. Com., 415) stated: "That upon the Norman Conquest a new doctrine took place: and the right of pursuing and taking all beasts of chase or venery, and such other Animals as were accounted Game, was then held to belong to the King, or to such only as were authorised under him: and this as well upon

the principles of the Feudal Law, that the King is the ultimate Proprietor of all the lands in the Kingdom, they being all held of him as the Chief Lord or Lord Paramount of the Fee; and therefore he has the right of the universal soil to enter thereon, and to chase and take such creatures at his pleasure; as also upon another maxim of the Common Law which we have frequently cited and illustrated, that these animals are *bona vacantia*, and having no other Owner belong to the King by his prerogative. As therefore the former reason was held to vest in the King, a right to pursue and take them anywhere, the latter was supposed to give the King and such as he should authorise, a sole and exclusive right."

In the seventeenth century there was practically little or no shooting by the owners of lands personally, such owners being apparently contented to remain indoors, and to pay small sums from time to time to their vermin-killers, or any one else who could shoot, trap, or snare partridges, wild-duck, snipe, woodcock or land-rail, that were brought in from the manors, a larger sum being paid in the case of a "Feasant".

Notwithstanding what has been before stated, there would appear to be strong authority for showing that there was not in the king that exclusive right to all game which is contended for. It is admitted that from the Norman Conquest all lands were considered as holden of the king as the ultimate proprietor, also that the early kings had a large portion of the lands of the kingdom in their power, consisting generally of waste-ground, woods, etc., and that it was within their province to create forests from the waste lands. If they made forests they would undoubtedly have the exclusive right to the game therein. But according to the *Sporting Magazine*: "Not satisfied with this they were accustomed in the exercise of an arbitrary and despotic tyranny to appropriate to themselves the lands of their subjects for the purpose of making new forests; and to increase the extent of the old-established forests, by including within their boundary lands the private

property of individuals that happened to lie contiguous. It was one of the main objects of our ancestors, in struggling for the Charter of Forests, not only to put an end to similar acts of oppression, but to procure the restoration, or, as it is usually termed, the disafforestation of these lands. They were disafforested, and the ground so included as being near the old forests were after disafforestation called 'Purlieus'. Now, Sir Edward Coke, whom the lawyers look up to as the highest authority upon all points of law, says, when speaking of these purlieus: 'We find no authority in law that we remember against our opinion herein, therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may do on his grounds that never were afforested at all'."

There would appear here a declaration of a person having the right to the game on his own land, long after what was supposed to have been introduced by the Norman Conquest, and further that the king himself ceased to have any property in the game from the moment that such game quitted that forest, and arrived on the ground of a private individual.

Brooke in his *Abridgement* states "that when the wild beasts of the king go out of the forest, the property is out of the king. The king has property in them while in the forest, for the soil makes the property of such beasts."

A "Forest," though a royal possession, was capable of being vested in a subject, and a grantee from the Crown would have the franchise of a forest to the full extent, which is somewhat different to a right of Common, which issues out of the soil.

A "Chase" is a franchise granted by the Crown empowering a subject to keep for his diversion therein wild animals of chase, but the authority to establish Forest Laws would not apply.

"Free warren" was a franchise granted to a subject

by the Crown, for the preservation of beasts and fowl of warren, such as hares, rabbits, pheasants, partridges and other birds of game (not grouse), woodcock, mallards, herons, etc.

There appear to have been restrictions as to the manner in which game could be *killed in those days*, as 2 James I. c. 27 prohibits the use of guns, bows, setting-dogs, nets and snares for that purpose. The object, no doubt, was to favour hawking, a favourite sport, and to protect it. The Act has since been repealed so far as shooting hares is concerned, and perhaps so far as shooting the other classes of game mentioned in it.

As far back as the reign of Henry VIII. the *buying and selling* of game was prohibited. The 32 Henry VIII. c. 8 subjected a person who bought or sold any pheasant or partridge, unless he were an officer of the royal household, to certain penalties, and in the second year of the reign of James I. an Act increased the seriousness of matters by making the penalties to apply to every person who sold or bought to sell again any deer, hare, partridge or pheasant, except partridges and pheasants reared or brought up in houses or brought from beyond the seas, and in William and Mary's reign and Anne's further Acts were passed for the more effectual prevention of offences committed in respect of the unlawful destruction and sale of game.

So far as the *qualification for killing* game was concerned, this was referred to in many statutes down from Richard II., but the main one was that of Charles II., from which it appears that only those were empowered to kill game who had an estate of inheritance in real property of the clear yearly value of £100, or an estate for life or for ninety-nine years or more of the clear yearly value of £150. To these were added sons and heirs apparent of esquires or of persons of higher degree, owners of certain franchises, as forest, parks, chases and free warrens, and lords of manors.

From the various Acts on the subject down to this

period, it is quite apparent that the main objects our legislators had in view were the prevention of persons of small means wasting their time in idleness and sporting, or eking out a living by poaching on the lands of others, and, of course, to stop the wholesale destruction of game by trespassers.

In 1828 a Committee of the House of Lords made a report as to the desirability of amending the Game Laws in regard to the sale of game, the possession of it by certain persons, and many other matters affecting game. The following is a copy, from which it will be seen that the Game Act of 1831 embodied the chief suggestions, though, so far as night poaching offences were concerned, the 7 & 8 Vict. c. 29 (1844) extended the Act of 9 Geo. IV. c. 69 (1828) to taking game or rabbits on any public road, highway or path, or the sides thereof, or any opening, outlets or gates from any such land into any such road, highway or path.

1. That the laws as to the sale and purchase of game were inefficient for their purpose, being constantly and systematically evaded and set at defiance.

2. That these laws ought to be repealed, or so altered as to permit game to be lawfully sold, under certain regulations.

3. That the laws which confine the right of sporting and possession of game to persons having certain qualifications by birth or estate, were unjust and should be amended.

4. That in order to give additional facilities to a regular supply of game to the market, by qualified persons, in case of the sale and purchase of game being permitted by law, and also to place the law with regard to qualifications upon a more reasonable and just footing, all persons occupying ten contiguous acres or more of land, should be deemed to be qualified to sport on such land in their occupation, with the consent of the owner of such land, and that all owners of ten contiguous acres should be deemed qualified to sport upon such land.

5. That all persons qualified by law to sport should have the right to permit any person, whether qualified or not, to sport upon the lands of such qualified persons.

6. That all lords of manors should have the right to permit any person, whether qualified or not, to sport upon the waste or commonable lands within their manors.

7. That inasmuch as the legal sale and purchase of game will necessarily invest that article in some degree with the character of property, it appears to be just and reasonable that it should be protected from trespassers under the pretence or for the purpose of sporting, by some more effectual and summary means than at present exists, and that such trespassers, whether qualified or not, should be subject to a punishment by way of a fine by a magistrate, always excepting such trespasses as may be committed in coursing and hunting in recent pursuit, the existing remedies for which might be considered sufficient.

8. That the proposed alterations in the law should not be permitted to interfere with any existing forestal rights, or rights of free warren or free chase, or manorial rights whatever.

9. That the practice of going out by night to poach in large gangs has very much increased of late years, and has in very numerous instances led to the commission of murder and other grievous offences.

10. That the only statute which specially refers to this practice is that of 57 Geo. III. c. 90, which appears not to have been effectual, and should in the opinion of the Committee be revised.

At this period undoubtedly much more illicit traffic in game prevailed than at the present time, from the fact that the landlords were not empowered to sell game, also from the increasing number of persons sufficiently wealthy to buy game, and desirous of buying and supplying their table with the same luxuries as the landlords themselves. In consequence nearly

every stage coach that went from the country to London or other large cities, was utilised by poachers along the route, who handed in stolen game, to be forwarded to the urban dealers. To such an extent did this prevail that it is recorded that quantities were seized by the authorities and ordered to be destroyed as unfit for human food, and on one occasion about 2,000 partridges were consigned to the Thames.

The condition of the Game Laws with regard to the right of shooting is very amusingly illustrated by Colonel Peter Hawker, in his well-known *Diary*, (vol. i., p. 12), in which he gives the following account of a shooting expedition on the 3rd day of October, 1808:—

"Went from Ipswich with a party amounting to near twenty, besides markers and beaters to storm a preserved cover belonging to Parson Bond, because he never allowed any one a day's shooting, and had man-traps and dog-gins all over his wood. I had made out a regular plan of attack and line of march, but our precision was frustrated by the first man we saw on reaching the ground, who was the keeper; we therefore had no time to hold a council of war, but rushed into cover like a pack of fox-hounds before his face. Away he went, naming every one he could, and we all joined him in the hue and cry of 'Where is Parson Bond?'

"In the meantime our *feu de joie* was going on most rapidly. At last up came the Parson, almost choked with rage. The two first people he warned off were Pearson and myself; having been served with notices we kept him in tow while the others rallied his covers and serenaded him with an incessant bombardment in every direction. The confused Rector did not know which way to run. The scene of confusion was ridiculous beyond anything, and the invasion of an army could scarcely exceed the noise. Not a word could be heard for the cries of 'Mark,' 'Dead,' and 'Well done,' interspersed every

moment with bang, bang, and the yelping of barrack curs. The Parson at last mustered his whole establishment to act as patriots against the marauders, footboys running one way, ploughmen mounted on carthorses galloping the other, and every one from the village that could be mustered was collected to repel the mighty shock. At last we retreated, and about half-past four those who had escaped being entered in his doomsday book, renewed the attack. The Parson, having eased himself by a vomit, began to speak more coherently and addressed himself to those who, being liable to an action of trespass, were obliged to stand in the footpath, and take the birds as they flew over; at last so many were caught that the battle ceased. Though a large number of pheasants were destroyed, the chase did not end in such aggregate slaughter as we expected, and not more than one-third of those brought down were bagged, in consequence of our being afraid to turn off our best dogs; we brought away some of the Parson's traps, one of which was a most terrific engine, and now hangs in the mess room for public exhibition. Only one dog was caught the whole day, and whose should that be but Parson Bond's."

What must naturally strike one at the present day is the very different laws which governed the active shooting party as above described.

It appears that Parson Bond owned the manor, but he was quite unable to prevent any one shooting on it till he had "named them," and given them formal warning that this was a private manor, and that they had no business there.

If the gunners could escape being named, "served with notice," they might continue to kill and carry away as much game as they could. It seems, however, that after "notice had been served," they were lying under the ban of trespass, and then in order to carry on their depredations, they had to stand on the footpath, and take the pheasants as they flew over.

This we understand then was the position: Persons

being either landowners or sons of landowners, with the necessary qualification, as mentioned in a previous page, could shoot anywhere or on any land provided it was not defined as a manor. If it was defined as a manor, that is, preserved land, their sport could be stopped by the "naming" of the trespassers, and the "serving of a notice" of the existence of the manor as a preserve.

This condition of things was put an end to by 1 & 2 Wm. IV. c. 32 (1831), which provides imprisonment and fine for those wilfully and unlawfully infringing the provisions of that statute. Close seasons are also wisely provided for, during which no person may kill or take game, and for the protection of eggs of birds of game without incurring penalties for such violation.

In addition to the above-mentioned Act, the following are some of the more important statutes affecting game:—

The Night Poaching Acts, 9 Geo. IV. c. 69 (1828), and 7 & 8 Vict. c. 29 (1844);

The Poaching Prevention Act, 24 & 25 Vict. c. 114 (1862); and

The Ground Game Act, 43 & 44 Vict. c. 47 (1880).

It is proposed to refer to the more important sections of these Acts, where a penalty is provided for any offence, and to add a few remarks which may be found useful, where proceedings before justices are contemplated, with a view to putting a stop to a repetition of such offences.

Considering the interests involved, and the large amount annually expended by landed proprietors and shooting tenants in the rearing and preservation of game, and whose interests are so persistently attacked by poachers and others, it is not unnatural that influential associations should have been formed in the various counties in the United Kingdom, where members may on payment of an annual subscription safeguard their rights, and aid and assist each other in the

protection of their interests and the preservation of their game, but more particularly partridges and their eggs.

In a subsequent chapter the necessity for and the desirability of these associations will be dealt with.

Of the iniquity of game preserving a great deal is sometimes said, chiefly by the illiterate, but these associations contend that game preservation, within certain limits, brings money from the towns and from over-sea countries into our not too prosperous rural districts, and in addition provides for the poorer classes an enormous quantity of a wholesome variety of food at a less cost than it can be commercially produced or imported.

We have heard it said that to interfere in the Game Laws, with a view to an extension or rectification of some of the sections in the Acts at present in force, might do more harm than good, and be the thin end of the wedge towards their repeal. Considering the great affection and interest of all classes in sport, we can only wonder how such a suggestion could possibly arise. Such a thing as attempting to entirely repeal the Game Laws seems an absurdity in view of the interests involved. Personally, we have always looked upon the Game Laws as an absolute necessity in this country, as indeed it is in all countries so long as game is maintained. If those who will not work, but prefer to poach on the preserves of others, would only mend their ways, there would be very little to be found fault with, but while that happy result cannot be attained, owners of land surely are justified in endeavouring to protect their own interests; and if there were no receivers, unfortunately always willing to assist poachers in getting rid of their stolen game, the latter would soon find the risk was not worth running.

We have not, in a small work like the present, thought it necessary in any way to deal with the Game Laws affecting Scotland and Ireland, but may point out that many of the Acts referred to apply equally

to England, Scotland and Ireland, *viz.*, the Poaching Prevention Act; the Night Poaching Acts; the offences of selling and buying game unlawfully by other than licensed dealers; the laying of poison on land to destroy game; also the Wild Birds' Protection Act, and the Acts regulating the law as to granting of licenses to kill game, though in Ireland the section referring to rabbits is inapplicable so far as they are concerned. The Game Act of 1831 does not appear to apply to those countries.

LICENSES TO KILL GAME, ETC.

To kill or pursue, or use dog, gun, net or instrument for killing or taking game, including hares, pheasants, partridges, grouse, heath or moor game, black game, bustards or snipe, quail, landrails, conies, or deer.

	£	s.	d.
From 31st July to 31st July following .	3	0	0
From 31st July to 31st October . .	2	0	0
From 31st October to 31st July . .	2	0	0
For a fortnight to be specified . .	1	0	0
Gamekeeper's License	2	0	0
To deal in Game (expiring 1st July) .	2	0	0
For Gun License (expiring 31st July) .	0	10	0
Dog License (dog over 6 months old) (expiring 31st December) . .	0	7	6

The exceptions to taking out a dog license are: For a blind man or woman; young hound under twelve months old, not used with pack when master has taken out license for all hounds used in pack.

Under the Dogs Act of 1906, which came into force on 1st January, 1907, the police may seize stray dogs and give notice to the owner that they will be either sold or destroyed if not claimed within seven days.

The occupier of premises where a dog is kept shall be presumed to be owner; and damages to cattle, which

term includes "horses, mules, asses, sheep, goats and swine," when under £5 may be recovered summarily as a civil debt. The Act was no doubt passed mainly in the protection of sheep, and as it will no doubt tend to the safer keeping of dogs of a mischievous propensity within bounds, it will also be of some service in the prevention of the illicit destruction of game.

It is not necessary to prove scienter on claim for damages.

Under rules made by the Lord Chancellor, the consent of a Court of Summary Jurisdiction to a Dog License Exemption Certificate is now required under the above Act, no fees being payable. Lists of the intended applications for certificates are published, and any person may, during the fourteen days preceding the hearing of the application, lodge an objection with the justices' clerk if it can be shown the dog is not kept solely for use in tending cattle or sheep. In the case of no objection being raised the court will consent, but if in any case it appears doubtful if the applicant has the right to exemption, the justices would be acting within their powers to require an application in person and take evidence on oath.

Lord Lindley, the chairman of the Swainsthorpe Petty Sessions on the 21st June, 1907, dealt very exhaustively with this question of exemptions from dog licenses, and below we give his views as appeared in the *Eastern Daily Press* on the following day:—

"'The Dogs Act, 1906, has altered the procedure for obtaining exemptions from dog licenses, and has created a difficulty which is embarrassing to magistrates.

"'Before the passing of this Act, dog licenses and certificates of exemption were obtained from the Excise authorities, under the provisions of the Customs and Inland Revenue Act, 1878, sect. 22; and justices had nothing to do with granting either the licenses or the certificates of exemption. Certificates for exemption were obtained by filling up and signing and sending to the proper officer declarations stating the grounds on

which exemption was claimed. Forms of declarations for this purpose were issued by the Commissioners of Inland Revenue, and the names of the persons to whom they had to be delivered were stated in the forms. On sending a form properly filled up and signed to the person so named, the applicant became entitled to a certificate of exemption.

"'The Dogs Act, 1906, sect. 5, clause 1, requires the consent of a petty sessional court to the grant of a certificate of exemption from a dog license, but such consent is not to be withheld if the court is of opinion that the conditions for exemption mentioned in section 22 of the Act of 1878 apply in the case of the applicant; and the procedure for obtaining that consent is to be regulated by rules made by the Lord Chancellor. Clause 2 of the section requires these rules to provide for dispensing with the appearance of the applicant, except where the application is opposed, and the court considers the appearance of the applicant to be necessary for the proper consideration of the application.

"'Rules have been made by the Lord Chancellor under the authority thus given, and they provide that an application for the consent of a petty sessional court to the grant of a certificate of exemption is to be made by sending to the clerk of the court a declaration in the form prepared by the Commissioners of Inland Revenue, duly filled up and signed by the owner of the dog. Lists of these applications are to be made by the clerk, a time is to be named in the lists for sending to him notices of objection, and he is to send notice of the time and place of hearing the objection to the applicant and to the person objecting. The applicant is to be informed whether his attendance is or is not required, and the fifth rule states as required by the statute that his appearance shall be dispensed with except when his application is opposed, and the court considers his appearance to be necessary for the proper consideration of the application. Evidence given on hearing an objection must

be given on oath, and the court has power to summon witnesses, as under the Summary Jurisdiction Acts, and to order objectors or applicant to pay costs.

"'The Act of 1906 does not make it the duty of the Excise officers or of the police or of any one to object to an application, although it may be known or believed that the applicant may not be entitled to exemption; and in practice it seldom happens that any one does object. The risk that an objector may have to pay costs if his objection proves unfounded naturally deters people from objecting. But although no objection may be made, justices may be informed, or some of them may know, or, at all events, believe, that an applicant is claiming exemption to which he is not entitled. This state of things is not provided for by the rules; but the Act casts upon the justices the duty of satisfying themselves that the applicant is entitled to what he asks. The Act says, and the rules repeat, that the applicant is not to be required to appear unless the application is opposed; and when the list comes before the justices for their consideration, the time fixed for opposing has expired. The justices are thus placed in an awkward position, and no one can be surprised that not knowing what to do they give credit to the declaration and grant their consent without troubling themselves further about the matter. I cannot, however, think this is right. The Act and rules presuppose the lodging of objections, and the rules provide for them. But where no objection is lodged the rules appear to me to have no application. The duty, however, which is imposed by the Act on the justices remains to be performed by them, although no directions are given as to the way in which it is to be performed. If an applicant's declaration is so filled up as to be unsatisfactory, I take it to be clear that the justices can properly withhold their consent. But even if a declaration is unobjectionable on its face, still if the justices are informed that the facts stated are untrue, it is difficult to see that they discharge their duty to the public by granting their consent without further inquiry.

They cannot justly refuse their consent without giving the applicant an opportunity of supporting his application by further evidence; but to grant their consent without further inquiry seems wrong in principle. Their consent is requisite in every case, and there is nothing in the Act which requires them to give their consent if they are of opinion that they ought to withhold it. There is nothing which says that in the absence of opposition they are not to exercise their intelligence and must give their consent, although they have reason to believe, or at all events to suspect, that they are being imposed upon. In such a case I cannot help thinking that their proper course is to order the application to stand over, and to give notice to the applicant that they are not prepared to give their consent without further inquiry; that evidence may be given which he must be prepared to meet, and he should be informed of the matters on which evidence is to be expected.

"'Notice should also be given to the Excise and police, so that when the case comes before the court again it may be in a position to decide it upon its merits. The court might properly request the police to ascertain the facts, and give evidence. When the case comes on, the evidence, if any, must be taken on oath. If evidence is given, the justices will, of course, be guided by it, and give or withhold their consent according to the view they take of it. If no evidence is forthcoming they should be satisfied with the declaration, unless they think a further adjournment necessary, which, although possible, is not probable.

"'If these precautions are taken effect will be given to both clauses of section 5 of the Act of 1906. The second clause does not in my opinion relieve justices from the duty imposed upon them by the first clause; nor cut it down and reduce it to a nullity in all cases in which no one thinks it worth his while to oppose an application for the grant of a certificate of exemption. The second clause protects applicants from the necessity

of appearing to meet frivolous and vexatious objections, but is a mere piece of machinery for carrying out the first clause, and ought not to be construed so as to make justices useless unless there is opposition.

"'In the early part of this year a case raising the difficulty above mentioned came before this bench when I was in the chair; and not having looked carefully into the matter, I took the view that there being no opposition, the bench could not withhold its consent, and we acted on that view. I had great misgivings as to its correctness, and I undertook to look into the Dog Licensing Acts and Rules, and to advise the bench as to the course we ought to pursue in future. I have now done so; and until otherwise decided by higher authority my advice to the bench will be in accordance with the view here expressed.'

"His lordship added that they had gone through the list of applications that morning. There was nothing wrong on the face of them, except in the case of an application for an exemption in respect of two dogs. With regard to that applicant he had a farm of 250 acres. He had thirty-six cattle, but no sheep at present. He had two dogs, a collie and a Smithfield, but as he had no sheep he was not under the circumstances entitled to exemption for two dogs. They would grant an exemption for one dog, and if he wanted the other he could apply for it."

If a farmer makes a false declaration when filling up the form claiming exemption he would be liable to a penalty under the Customs and Inland Revenue Act, 1878, as amended by the Act of 1879.

Proof of age of dog lies on a defendant in case of keeping dog without license.

Of course the old law as to dangerous dogs is still in force, and an order may be made on owner to keep same under proper control or destroy. Under the orders made under Dogs Act of 1906 and other Acts, name and address of owner must now be inscribed on collar or on a plate or badge attached when dog is on highway, etc.

The exceptions from game, etc., licenses are the following:—

1. Taking of woodcock and snipe with nets or springs in Great Britain.

2. Taking or destroying rabbits in Great Britain by the proprietor of any warren or enclosed ground or by the tenant of lands, either by himself or by his direction or permission.

3. Killing or pursuing hares with greyhounds or hunting with beagle or other hounds.

4. Pursuing and killing deer by hunting with hounds.

5. Taking and killing deer in enclosed lands, by occupier or owner of such lands or by his direction.

Exemptions apply to the following persons:—

1. To any of the Royal Family.

2. Any person appointed a gamekeeper on behalf of His Majesty by the Commissioners of His Majesty's Woods, Forests and Land Revenues under authority of any Act of Parliament relating to the Crown's land revenue.

3. Any person aiding or assisting in the taking or killing of any game or any woodcock, snipe, quail, landrail, or coney or any deer, in the company or presence, and for the use of another person who has duly obtained according to the direction of the License Act, 1860, and in his own right, a license to kill game, and who shall by virtue of such license then and there use his own gun, dog, net or other engine for the purpose of taking game, and who shall by virtue of such license then and there use his own dog, gun, etc., for the taking or killing of such game, woodcock, snipe, quail, landrail, coney, or deer, and who shall not act therein by virtue of any deputation or appointment.

4. And as regards the killing of hares only, all persons who under the provisions of the two Acts 11 & 12 Vict. chaps. 29 and 30, are authorised to kill hares in England without obtaining an annual game certificate.

5. Under the Ground Game Act, the occupier and persons authorised by him to kill such game on the land occupied by him. (See Chapter on Ground Game Act.)

GAME DEFINED.

Doubts are often expressed by laymen as to what is "game," and what is not. The following is the definition under the various statutes:—

Under Game Act, 1831: "Hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards".

Poaching Prevention Act: "Hares, pheasants, partridges, eggs of pheasants and partridges, woodcock, snipe, rabbits, grouse, black or moor game and eggs of grouse, black or moor game".

Ground Game Act: "Hares and rabbits".

SPORTING RIGHTS.

It may perhaps not be out of place if a few remarks are made with respect to the advantages all classes of the community indirectly derive from sporting rights, *i.e.*, their assessment to the poor and other rates.

It does not appear to be generally known, except to those who pay them, that these rights contribute very largely to the rates, in many cases out of all proportion to the advantages derived, and of course the better the shootings the higher the assessment. Assessment Committees in some unions have been known to double the assessment of partridge shootings, *i.e.*, bare land, *viz.*, from 1s. 3d. to 2s. 6d. per acre, and that on woods from 3s. 6d. to 7s. per acre, and where the acreage frequently runs into thousands of acres the rates amount to considerable sums paid, although they may be spread over more than one parish. Such assessments pay their full share of the rates as "Buildings and other hereditaments," and not merely half as "Agricultural land," which must appreciably help to reduce the burden of the rates on the general ratepayer.[1]

Not only are these rights assessable when actually

[1] It has, however (we are informed), been successfully contended that unsevered sporting rights should be entered in the land column of the assessment; though the general practice is to insert all sporting rights in the "buildings and other hereditaments" column.

severed from the land and let to a third party, whom we may describe as the "Shooting tenant," but also where retained by the landlord, or vested in the tenant. Apart from the rates, sporting rights are very often mulcted in land tax, as an emolument arising out of land, under the Land Tax Acts. Fortunately for the sportsman, this is not universal throughout the country, as a different practice prevails in some parts of the country, though why this should be so it is difficult to understand. Where the tax has been assessed and objection made to payment, instances have occurred of no further proceedings being taken for the recovery of the amount demanded.

Owners of sporting rights take very different views as to the payment of this Land Tax on severed sporting rights. One owner held that since it was an Imperial tax, it would be disloyal to question either its legality or the amount. Another thought it was not worth while to trouble in the matter, as the Government would have it out of him some way or other. A large landowner said his agent was a good one, and it was probably all right. Some owners have withheld payment, and no further demand has been made.

The Board of Inland Revenue, it would appear, does not now consider that severed sporting rights are assessable to Land Tax, being of opinion that the liability to this tax is one of doubt and difficulty, and probably recognising, that while in the Act of 38 Geo. III. c. 5, sect. 24, the numerous sources of taxation are specifically mentioned (including "the right of fishing"), "sporting rights" are not so mentioned or included.

From the reports of the Game Guild it would appear that in 1904 their Executive Council advised its members to redeem all land tax on their woods and on the sporting rights which are invariably attached to them, which advice was given on the assumption that the valuation of such sporting rights would be increased, and which assumption has been already verified on appeals against poor rates in respect of such rights at petty and quarter sessions.

The Local Government Board have recently published a summary of the law relating to the rating of sporting rights (*Journal of Agriculture*, August, 1905, p. 285), of which we reprint the most important clauses, and which the reader may consider worth a perusal.

"Where the right is not severed from the occupation of the land (*i.e.*, where the owner retains both the land and the right, or lets them both to one tenant) the value of the sporting rights are still included in the valuation of the land; but in any other case, the right must be dealt with in the manner directed by section 6 of the Rating Act, 1874.

"Where any right of sporting is severed from the occupation of the land, and is not let, and the owner of such right receives rent for the land, the right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated as if the right were not severed. It would seem, however, that the prohibition in the sub-section of a separate valuation or rating of the right of sporting is modified by section 5 (*a*) of the Agricultural Rates Act, 1896, which requires that in every valuation list the value of agricultural land shall be stated separately from that of any building or other hereditament. Where, therefore, the rateable value of any agricultural land is under the Rating Act, 1874, increased by reason of its being estimated as if the rights of sporting were not severed, the amount of such increase should, for the purpose of the valuation list, now be included in the rateable value of buildings and other hereditaments not being agricultural land.

"The rate payable in respect of any sporting right so entered in the valuation list may be deducted by the occupier of the land from his rent under section 6 (1) of the Act of 1874, unless he has specifically contracted to pay such rate in the event of an increase. The direction in section 6 (1) is that the value of the land shall be estimated *as if the right were not severed.* It would appear, therefore, that in dealing with the right

as an element of value, it ought not to be estimated upon any such consideration as that of the rent which a third person might be found to give for it, but according to its worth, if any, to the occupier of the land, upon the supposition that the right is not severed: or in other words, that he himself is entitled to exercise the right, without the power of making a profit by letting it.

"The effect, therefore, of this provision is to place those lands which are let by an owner, with a reservation of the right of sporting, on the same footing in relation to rateability as the lands which he himself occupies, retaining the right to the game upon them.

"The preceding remarks are mainly directed to those cases where the right of sporting is severed from the occupation of the land, but is retained by the owner. Where, however, the right is let to a person other than the occupier of the land, it is rateable as a separate hereditament, and either the owner or the lessee of the right may be rated, as the occupier of the right of sporting, under section 6 (2) of the Act of 1874. The ordinary rules of law for determining the gross estimated rental and rateable value of other kinds of property will apply.

"Subject to the provisions of section 6 the owner of any right of sporting, when severed from the occupation of the land, may be rated as the occupier of the right under sub-section (3) of the section. But where the owner receives rent for the land he could not be rated under sub-section (3) as the occupier of the right, because this case is dealt with by sub-section (1) of the section. For the purposes of the section the owner of the right is (1) the person entitled to exercise the right, if the right is not let; (2) if let, the person who is entitled to receive the rent for the same. The Poor Rate, General District Rate, Special Sanitary Rate, and other local rates are payable in full upon sporting rights when severed from the occupation of the land over which they are exercised and separately assessed."

GAME PROTECTION SOCIETIES.

As mentioned in a previous chapter, the formation of these societies throughout the country is of recent date. There are very few counties in England unassociated with sport, and if each could boast of a "Game Protection Society," composed of the leading landowners and shooting men in their county, a great advantage would accrue, not only to their respective members but to others interested in the preservation of game. They would provide a greater amount of sport, more protection to the game, and the eggs of birds of game, by the checking of unprincipled dealers and receivers, greater facilities for improving stock by the exchange or purchase of healthy birds and eggs, with many other advantages which need not be here referred to.

Rules and regulations are of course necessary to ensure good management, but these can be readily supplied to societies in prospective by the secretaries of existing societies, or might be drawn up by any legal draughtsman with some knowledge of the Game Laws.

At the present time there are in England several game protection societies, and societies formed for the encouragement of sport, amongst which are: (1) The Field Sports Protection and Encouragement Society, (2) The East Anglian, (3) Essex, (4) Bedford, (5) Hampshire, (6) Hunts Game Protection Societies, and (7) The Irish Game Protection Association, whose respective secretaries are :—

1. Mr. J. Powell, Essex Street, Strand, London.
2. Mr. Charles Row, 1 Redwell Street, Bank Plain, Norwich.
3. Mr. F. H. Bright, Malden, Essex.
4. Mr. A. Morrison, Mill Street, Bedford.
5. Mr. J. Charles Warner, 29A Jewry St., Winchester.
6. Mr. W. P. Theakston, Estate Office, Huntingdon.
7. Mr. B. J. Newcombe, 110 Grafton Street, Dublin.

All these societies, from our personal knowledge, are

doing and have done a great amount of good work in the interest of the sportsman, and in checking the illicit traffic in game eggs. The rules work admirably, and the respective secretaries would be happy to give any information or assistance they could in the formation of further kindred societies or associations in other counties where any assistance may be required. There is also another society, which, although not a game protection association, materially assists them; this is the Game Guild.

The guild, though it accepts subscribing members, should more properly be described as a committee, composed chiefly of large landowners, and having no interest whatever in any game-farming or selling, who yearly elect and support the legitimate game farmers who may desire it, inspecting farms, and eliminating names where any charge of unsatisfactory dealing is substantiated.

The committee issue a yearly report to the county associations affiliated to them for the purpose of information.

The Hon. Secretary is Mr. Nicholas Everitt, Prince of Wales Road, Norwich.

To deal with the various clauses of the rules of any of the present societies is scarcely warranted here, such societies being of a semi-private nature, and the rules the property of the members of those societies, but shooting men have everything to gain and nothing to lose by the introduction of such societies, and we are at a loss to understand why they are not more numerous than they are. It is high time for owners to combine for the mutual protection of their interests when agents are sent into villages for the collection of game eggs (pheasants and partridges) and offering good prices for them. The inducement is frequently more than an ordinary labourer can resist, knowing, as he invariably does, of several nests containing eggs, easy of access, which he can possess himself of at a favourable time, and thus put a few shillings in his pocket without any one being the wiser.

Occasionally valuable information can be imparted by the secretary of a society to its members, in districts where an organised raid by poachers is being engineered, he having more ways than one of obtaining early information. The information received from the various game farms within the area of the society's labours materially assists its members in the placing of orders for their pheasants' eggs, and what a vast alteration and improvement would be made in the standard of the present game farmer throughout the country if societies were more general to guard their mutual interests. The doubtful game farmers (if any did exist) would soon be identified through the members purchasing their eggs elsewhere, and weeded out in due course, and there would be greater reliance than is sometimes the case now, that the eggs ordered were actually produced on the farms whence they were purchased, as the buyer generally expects they should be. Many game farmers we know do not purchase eggs from outside their farms, and guarantee all eggs sold by them as having been produced on their farms, but others are sometimes obliged to buy when their production has not been equal to the demand, particularly in the early part of the season. A published list embodied in the Annual Report giving names and addresses of the members willing to exchange game eggs, particularly partridges', by way of improving the stock, would be found very advantageous, and it would be advisable that the arrangements should be made direct (rather than through a formal process with the secretary), and thus expedite matters.

Now that the importation of Hungarian partridges has so much increased, much valuable information might be obtained from the reports forwarded by members on their purchases, who also on receipt of the consignment could forward details to the secretary of society, stating number on arrival in good health, loss of birds, name of consignee, etc. Occasionally by seasonable advice a member may be materially assisted in escaping from a

long and costly suit arising out of a transaction which has not been eminently satisfactory.

A list of foreign exporters of "Hungarians" is annually published in the Game Guild Reports, generally in order of merit, so far as known, together with their acreage of "catching rights," situation of estates, and credentials. So far as "Hungarian eggs" are concerned, a purchase at present is not very desirable, considering the prohibition recently placed upon their export. In 1904 in Germany the exportation was prohibited, in the Austria-Hungary Empire the export is prohibited from Hungary, Bohemia, etc., but not from Austria, and it is believed the eggs are obtained by forwarding through that province. The sale of these eggs being prohibited, the consequent difficulty in concealing their transport, and the likelihood that many of the eggs may be stolen, are among the vicissitudes of the foreign egg, so that it with difficulty arrives in England in a fertile state. Some persons even go so far as to say that in occasional instances the eggs of the previous year are consigned as fertile eggs.

With regard to the trade in birds in the "catching up" area on the Continent the seasons are as follows:—

In Germany "catching up" is allowed to the 31st January, but a special permit may be obtained up to 15th February if the birds are not required for food.

In Hungary "catching" is allowed to 1st January, but permission may be obtained to 1st February, though one importer states that the season ceases on the 15th January, and that permission may be allowed until the 30th January.

In Bohemia "catching" begins on 15th August, and is allowed until 31st January, and no permit is given for further catching.

It would seem that after the above dates all or nearly all the birds imported must have been penned for a longer or shorter period.

The great difference of opinion in England as to the

success of the system of importing "Hungarians" is due to the length of time the birds are penned, and the sanitary condition of the foreign pens; in short, all birds should be imported before January, and it is desirable that foreign eggs, intended for exportation to England, should be tested abroad before being despatched, and certainly also by the consignee on their arrival; and looking at matters in a business light, it might be prudent for the purchaser to delay payment until he has satisfied himself with the result of the test. The same remarks apply to the purchase of birds.

It is recognised that birds despatched immediately after being caught are likely to be more healthy and fertile than those which have been penned, and rightly command higher prices. It is also equally clear that birds are more likely to be fresh caught if bought in the months of November or December than in January or February, and are also cheaper. If foreign exporters clearly understood that English buyers would always repudiate payment for dead birds, they would be more careful in despatching bad ones, and paying carriage for them. This would in time induce the local farmers and dealers to build larger pens, and keep their birds under healthier conditions.

We should like, however, to say there must always be some doubt whether a purchase of "Hungarians" is not a purchase of English birds (though we do not say it is so), unless those from whom the purchase is made are above suspicion.

The question of the prevalence of enteric amongst pheasants and partridges is of importance to sportsmen, so, from information obtained from the members of the East Anglian Game Protection Society in 1906, who had replied to queries asked them, we have been permitted to extract from their Report the following:—

"Very many of the members believed themselves clear of the disease; on the estates of a very few the disease

existed last year among pheasants, and on some partridges were also affected, the loss in instances given varying from 10 to 30 per cent."

One member states: "In my opinion, much of the so-called enteric is not enteric at all, but diarrhœa, which arises from wrong feeding; the young birds are too forced on with heating foods, and cannot stand sudden chills and wet". This is also the opinion of other members.

Another states: "In the spring of 1904 there was a bad attack of enteric in the rearing field, a part of the park. It had not been used for many years for rearing purposes, so could not have been contaminated by previous use. The ground, however, is used a good deal for sheep grazing, and there are a few rabbit runs and holes; my own theory is that as it was a particularly dry season, the pheasant chicks got absolutely no natural food in the way of insects, and so ate only artificial food, the result being that the intestines became deranged and irritated, and a ready prey to the enteric bacillus. Anyway, directly the rain set in, the chicks picked up, the enteric became less violent, and seemed to abate entirely." Some of the members complained of the increasing number of poultry houses on farm lands, and say that these are often filthy, and a source of disease; this may be so, but the homestead poultry houses are generally still fouler, and more liable to spread enteric, and a landlord might do worse than ask his tenant to allow him to whitewash these annually, free, of course, from any charge, especially as a whitewash sprayer has recently been invented for such purposes.

It is hardly necessary to say that there is no remedy for this disease, and one means of prevention, cleanliness and sanitation, and that it can be communicated by the bought fowls, food, keepers' clothes, cooking utensils; it is also suggested that dipping coops in creosote or other disinfectant is preferable to application by hand and brush.

It has been suggested that so far as the English partridge is concerned, a certain number of cock birds might be caught, and kept in pens till the breeding season, and then put in charge of young partridges hatched under hens. On all estates there are usually a number of nests mown over, or made in dangerous places, and it is said that an unmated cock bird is a far better nurse than a barn-door hen, and that broods so tended will not be so likely to "pack" later in the season. It is also suggested that "Hungarians" might be bought for this system, but the difficulty still remains, that of catching the cock birds.

With respect to the English partridge, we should like to make a suggestion to Game Associations which we think would, if carried out, be of the greatest importance to preservers of game and sportsmen generally, and that is, that each society should obtain from the game dealers within their respective areas an assent to assist the society by refusing to deal in live English partridges or their eggs. If there were no trade in the provinces, the eggs would be very difficult to get into the London market and thence to the Continent, and not much possibility of any of them coming back as "Hungarian". Little difficulty would be found in making the above suggested arrangement, as we have happily found out by experience in the eastern counties

So far as live partridges are concerned, it may in the eyes of some persons be considered unnecessary to provide for this, but we would submit that it is necessary.

It would be very unusual for a sporting tenant to covenant in his lease to leave so many hundred or thousand partridges on the land at the expiration of his lease, consequently there would be probably nothing to prevent him catching up partridges wholesale, having made arrangements with licensed game dealers for their purchase. We have never heard of this practice being resorted to, and hope we never will;

but we think the suggestion we have made is a very good one, and might be used to the mutual advantage of all concerned. Game dealers, as a rule, know on which side their bread is buttered, and are not bad to deal with when treated fairly.

Too much credit cannot be given to these associations for checking the illicit traffic in game out of season, for which all good sportsmen should be very grateful.

The early consignments into the London markets of the large quantities of game on the morning of the opening days of the season has no doubt struck many an observer, and as to how such large numbers can possibly find their way to market. If we might venture an opinion, we should say the birds have either been poached by unscrupulous persons having a right on the land off which the birds came, who have been unlawfully netting, trapping and shooting for a few days prior to the game season commencing, or, so far as pheasants are concerned, despatched by some game farmer who has been killing off a portion of his surplus stock after midnight on the morning of the opening day (1st October), by way of securing the best prices for the birds eligible for market. To this latter practice there is, of course, no objection, except possibly from the purchaser's point of view.

The convictions obtained of late at the instance of these associations, against those bold enough to run the risk, must have gone a long way towards putting a stop to such practices.

Game farmers are quite within their rights in trying to get the best prices they can for their surplus stock, curious though it may appear to have a large consignment of pheasants in Leadenhall Market by seven o'clock on the 1st October, killed that morning, we assume, by being knocked on the head before being despatched by the mail. As to partridges, no doubt many of those hanging up early on the morning of the 1st September have been netted by those who can have no sporting rights. An examination of the birds bought would soon

disclose the fact whether they had been shot or killed as above.

In the *Field* of the 22nd September, 1906, is a letter from Mr. W. Horton, of Glasgow, bearing on the necessity for the introduction of Game Protection Societies, which we think of sufficient interest to give an extract from. He writes: "An interesting poaching case came before Sheriff Blair at Dumbarton on the 12th inst., when two poachers were convicted of night poaching near Glasgow, and sentenced to two months' hard labour each. The capture was made by the keepers, and besides the usual poaching tackle, a 'Poachers' Diary' was found on one of the men, as follows: 'Me and my mate killed the following amount of rabbits from June 26th. Started June 27th, killed 45; June 28th, 46; June 30th, 25; July 2nd, killed 17; July 3rd, 41; July 4th, 40; July 5th, 20; July 6th, 1; July 7th, 8; July 8th, 44; July 11th, 16; July 13th, 49; July 14, 4; July 16, 28; July 18, 60; July 19, 32; July 20, 68; July 22, 25; July 23, 10; July 24, 15; July 26, 48; July 28, 40; August 5, 58; Aug. 7, 54; Aug. 8, 58; Aug. 9, 50; Aug. 10, 44; Aug. 11, 35; Aug. 13, 28; Aug. 14, 41; Aug. 15, 66; Aug. 16, 59; Aug. 19, 36; Aug. 20, 43; Aug. 21, 22; Aug. 23, 64; Aug. 30, 57; Aug. 31, 34; Sept. 1st, killed 83; Sep. 2, 72; Sep. 4, 80; Sept. 5th, 30.'

"The total catch is about 1,660, and probably gave each man 30s. a night. This diary is no doubt a unique document, and probably the first and last of its kind. It could not serve a better purpose than to form the keynote for a movement amongst the game preservers for such an alteration in the law, relating to the sale of game, as would make it impossible for a poacher to dispose of what he has killed, even though he held a game license.

"Only persons having the right of game on any land should have any power to sell game killed on that land, and to prevent evasion of the law by unscrupulous game dealers there should be suitable enactment.

"There are many excellent Associations of Game Preservers throughout the country, and for this purpose they might suitably unite. The outlet for poached game being removed, the occupation of the poachers would be gone."

We may add The Field Sports Protection and Encouragement Association have drafted a Bill for this purpose, which they hope in time to pass into law.

THE EXTENSIVE TRAFFIC IN GAME EGGS.

Some idea of the magnitude of the extensive traffic in game eggs in the eastern counties may be gathered from a perusal of a letter written by E. R. Pratt, Esq., of Ryston Hall, Norfolk, to the *Field* in 1900.

We also print the editor's footnote to the letter and the leading article on the subject.

"SIR,—You have so often in your columns condemned the indiscriminate purchase of partridge eggs, that I trust you will think well to publish the following facts, in the hope that their publication may act as a deterrent to this practice.

"On May 15 a man was found on my land with sixty-one partridges' eggs and nine pheasants' eggs. I believe he had never stolen before, but his wife was ill, and as he was out of work and had no money, I refrained from prosecuting him.

"He stated that he had arranged to sell the eggs to a certain dealer, and gave other information.

"This dealer was prosecuted at a petty sessions on the charge of aiding and abetting, but, on technical grounds, the case was dismissed. The dealer afterwards stated that he intended to give up the trade, as it caused 'more unpleasantness than the business was worth'.

"I find that during the first six months of this year a dealer made no consignments of any sort by train before April 26th, and none after June 5th. Between these dates he despatched by train alone :—

"Six baskets and boxes, weighing 194 lb., to a gamekeeper to Mr. —— of H——.

"Four baskets, weighing 80 lb., to a game preserver in Norfolk.

"Eighteen baskets and boxes, weighing 378 lb., to a fishmonger.

"The fishmonger, on his part, during the first six months of this year, consigned nothing by train before April 22nd, and nothing after May 31st, but between these dates he despatched boxes, etc., as follows:—

"Twenty-three boxes, weighing 871 lb., to a pheasant and poultry breeder in a home county.

"Twelve boxes, weighing 377 lb., to a gamekeeper to Mr. ——.

"Nineteen boxes, weighing 722 lb., to a landowner in H——.

"Fifty-nine boxes, weighing 226 lb., to a game farm in an eastern county.

"Fifty-one boxes, weighing 1,946 lb., to a consignee 'to be called for' at Liverpool Street Station.

"Twelve boxes, weighing 446 lb., to a gamekeeper to Lord ——.

"Thirty-four boxes, weighing 1,310 lb., to a gentleman in a home county.

"Thirteen boxes, weighing 543 lb., to another consignee at Liverpool Street Station 'to be called for'.

"Seventeen boxes, weighing 701 lb., to a game dealer in Norfolk.

"Ten boxes, weighing 270 lb., to the head keeper to a landowner in S—— W——.

"I forward the names and addresses of all these consignees for your private information.

"Now, if these baskets contained game eggs, calculating the weight of a partridge's egg at ½ oz., and a pheasant's egg at 1 oz., and assuming that they were in equal proportions, and allowing for weight of hamper and packing, this would mean a despatch by train alone of over 6,000 game eggs from the dealer, and

136,000 from the fishmonger, in which latter total probably the former eggs are included.

"But the chances are that the majority of these eggs are those of partridges, because pheasants' eggs are laid in confinement, and may be readily bought from game farmers, but partridges' eggs cannot, except in rare instances, be honestly obtained from fishmongers and gamedealers in towns.

"The railway company very properly make a rule not to divulge the contents of parcels consigned to them, and it may be that these boxes contained flowers or vegetables, or some such innocent produce; if so, and if it should appear, from any explanation afforded by the consignees referred to or otherwise, that I am mistaken, I shall be only too glad to admit my mistake in your columns. E. R. PRATT.

"Ryston Hall, Downham.

"[In the interest of sport we think it right to publish this letter, but, as a matter of courtesy to the consignees, we for the present withhold their names and addresses. The evidence produced to us in support of the statements above made, in conjunction with other information, justifies the conclusion:—

"1. That there is a large and increasing traffic in partridges' eggs throughout the country;

"2. That the purchasers do not exercise sufficient care to ascertain whether the source from which they buy is a legitimate one;

"3. That dealers, to enable them to complete their orders for eggs, are obliged to buy from one another; and

"4. That in many cases the eggs are stolen before they reach the dealers. The evils of such a system have been frequently pointed out in these columns, but still the practice prevails, and it would seem as if nothing short of publication of names and addresses could avail to check it. From this course we should not shrink if the interests of sport demand it.—ED., *Field.*]"

The *Field* article is as follows: "The modern craze for making 'big bags' is gradually leading to a condition of things which, if not speedily reformed, must soon prove disastrous. No one can blame a genial host who is fond of shooting for wishing to provide his friends with a good day's sport, but when the head of game killed in one day is to be counted, not by hundreds, but by thousands (as now often happens), it seems to us that the limits of moderation are far exceeded. . . . Unfortunately, in many cases our modern game preserver is very careless in his purchases. His keeper is told to look out for a few eggs, and to get them where he can. On the strength, perhaps, of an advertisement by the owner of a so-called 'game farm,' which, if inquiry were made, might prove to consist of an acre of ground with a few yards of wire netting and a dozen coops, serving merely as a 'blind,' he straightway orders a consignment of eggs that could not possibly be produced on so small an area, and must therefore be supplied by the dealer from some other source undisclosed. In some cases the vendor has not even the acre of ground and the coops to show. He shelters himself behind the announcement that he is a 'licensed gamedealer'. He buys where he can, and is not particular in ascertaining whether the eggs offered to him have been honestly obtained or not. The evils of such a system, if not patent to his customers, are pretty evident to everybody else. The price offered for game eggs by the dealer—who would not buy if there was not a market for them—is a direct incentive to poaching, and we are in a position to state that it is not merely from labourers and higglers who collect from labourers that the supply is originally obtained, but in some cases a direct bribe is offered to gamekeepers to betray their trust. We have in our possession a letter from a dealer to a gamekeeper offering to purchase grouse eggs from him at a shilling apiece."

The writer then refers to Mr. Pratt's letter, and continues: "It is little wonder that game preservers in

Norfolk and Suffolk should complain of a dearth of partridges in their districts when such wholesale abstraction of eggs is encouraged by those who should know better. Nor does the mischief end here. Many a poor man is in this way tempted to be dishonest, and, by the irony of fate, if caught and convicted, may find himself sentenced by a magistrate whose interests he has quite unwittingly endeavoured to serve. It is time that such an evil should be reformed, and it remains to consider the remedy. The Irish magistrates in some districts have set a good example by refusing to grant licenses to deal in game when the applicants declined to disclose their source of supply and to allow their books to be inspected. If that example were more generally followed it would go far to check the evil complained of, especially if the police were empowered to make the inspection. There can be no doubt, also, that the formation of societies for the prevention of poaching would be further aided in this direction, and the efforts already made by the Field Sports Protection Association, the Irish Game Protection Society, and the Norfolk Poaching Prevention Society (as described by Mr. Row, the secretary of the last-named guild in our issue of 20th May) are worthy of all encouragement. If the committees of such societies would prepare county lists of gamedealers willing to co-operate in the way suggested, and if landowners would abstain from dealing with any whose names are not on such lists, a healthier state of things would soon prevail."

In the following year the Norfolk and Suffolk Poaching Prevention Society (now East Anglian Game Protection Society) published in the *Field* a list of consignments by a Norwich game dealer, discovered by their agent, giving dates, etc., of which the following is an extract, and which undoubtedly showed that a considerable trade at that time was being carried on in the city of Norwich. This it is considered has, through the energy of the above society, to the satisfaction of its members,

undoubtedly been seriously checked, if not altogether stopped, so far as any illicit traffic is concerned.

"In the above case the society was not aware that any consignments had been forwarded in that year before the 26th April, on which date the consignor forwarded 3 boxes to a game farmer, labelled 'China and glass with care'. To another game farmer he forwarded, on the 27th, 4 boxes; 28th, 6 boxes; 30th, 2 boxes; 1st May, 3 boxes; 2nd, 5 boxes; 4th, 4 boxes; 7th, 2 boxes; 11th, 6 boxes; 12th, 2 boxes; 16th, 4 boxes; 17th, 2 boxes; 18th, 1 box; 21st, 2 boxes; 22nd, 3 boxes; 23rd, 6 boxes; 25th, 1 box; 30th, 4 boxes to another game farmer. To another consignee he forwarded on 7th May, 3 boxes; 8th May, 1 box; 14th, 2 boxes; 15th, 2 boxes."

GAME FARMS AND GAME FARMERS.

The importance of the game farm industry on a large scale can scarcely be imagined without a personal inspection of a farm, but some idea of its extent can be gathered from the fact that on some of the larger farms there are between 800 and 900 pens, many of them about fifty yards square, each containing about seventy-five birds, the majority smaller, however, and containing fewer birds; and that a no less number than 200,000 pheasants' eggs, and between 7,000 and 10,000 poults, are annually on offer for sale, independent of the number of eggs and birds required by the proprietor for stock for the following year.

Our first visit to a game farm was just prior to a nesting season. To see several thousand healthy pheasants surrounded by wire-netting ten or twelve feet high, supported by poles fastened in the ground, struck us as being novel and interesting. It is perhaps more interesting still to see the birds a little later on, in their long, low, flat pens (some corrugated iron, others creosoted timber, but generally the former), small and large, the smaller ones containing five hens and a cock

bird. The whole of the smaller pens are movable, and being moved each week or so, a change of grass and soil is obtained which prevents any possibility of the ground being foul or contaminated, the ground being limed every other year. Later still, the hundreds of coops, respectively possessed of a healthy-looking barn-door hen, in charge of a brood of twelve or fourteen young pheasant chicks, are exceedingly interesting. At some farms an amusing system is in vogue, the hens being taken from the coops to the rear, and there, whilst they and their broods are being fed, a change is afforded them on the fresher grass, some little distance from the coops. The hens are detained by a string affixed to one leg, the other end being fastened to a peg in the ground. This is at first very much resented by the hens, but they soon get accustomed to it and enjoy the change.

In the winter months, and when thought desirable, at some farms warm food is prepared for the pheasants in a large boiler on the premises, and at the more important farms a specialist is retained for the purpose of making periodical unexpected visits, for an inspection and examination of the birds and the food given them, when a change of diet may be ordered.

By way of obtaining the best possible results, and an encouragement to the attendants, some of the game farmers allow the men a percentage on the number of chicks successfully brought up to a profitable age, which no doubt stimulates the men to look well after their charge, and neglect nothing which may add to their advancement.

We should say movable pens for laying pheasants are undoubtedly the best for the health of the birds and the fertility of the eggs, and if the pens were moved every month, or even oftener, it would be advisable, so as to prevent any fear of contamination. To the purchaser we suggest that purchased eggs should be allowed a day or so to rest, after being unpacked before being placed under hens. If not practicable to then set them, they should be turned on their sides daily. In dry weather

the nest should be damped, but not the eggs. Sitting hens should be taken off the nest daily, and allowed off a few minutes each day. During hatching they should not be disturbed unless absolutely necessary, and the young birds should remain till perfectly dry before their removal, so as to prevent any chill being contracted. Insect powder may be sprinkled with advantage over the sitting hens and their nests.

The legal position of the game farmer so far as he is personally concerned can scarcely be said to be entirely satisfactory. Section 4 of the Game Act of 1831 is the one which most affects him, and that section is as follows:—

"That if any person licensed to deal in game by virtue of this Act, as hereinafter mentioned, shall buy or sell or knowingly have in his house, shop, stall, possession or control, any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or if any person not being licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such bird of game respectively as aforesaid, or shall knowingly have in his house, possession or control any bird of game, except birds of game kept in a mew or breeding place, after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively, as aforesaid, such person shall on conviction forfeit not exceeding £1 for every head of game so bought, sold, or unlawfully had in possession."

What, then, under the section is the position of a game farmer? If he has a license to deal in game, he must conform to the law as above set out, and must

not be in possession of game after ten days from the commencement of the close season. If he is not licensed, he must not be in possession of it after forty days (except in a mew or breeding place). Without a license he could not well continue his business, as he could only breed and rear and not sell. All extensive farmers are no doubt licensed to deal in game, as, of course, they must have a license to deal in game to enable them to sell game; section 28 applying to live as well as dead game, it cannot be bought from a person other than a dealer or the holder of a full £3 license to kill game, though, of course, no license is required for the sale or purchase of game eggs, they not being within the definition of game under the section.

Although game farmers might have some legal difficulty in justifying their position in keeping pheasants for sale all the year round in view of section 4 of the Act, we do not think any of them need be at all alarmed at the possibility of proceedings being taken against them for having birds in their possession as game dealers during the close season. We are not sure what the general practice throughout the country with game farmers is as to selling live pheasants during the close season, but it would appear to be within the statute to do so and they would thus incur the penalty. The law certainly requires modification so as to legally protect them under the changed circumstances, so as to recognise a legitimate trade. We do not, however, think that any one would be officious enough to institute proceedings, as a private informer, with a view to a penalty being imposed on a game farmer who has birds in his possession during the close season. In all probability the justices hearing the case would be very much guided by the fact that the Inland Revenue authorities themselves have recognised the existing state of affairs and taken no action against those apparently transgressing the section, under the altered circumstances of the times.

With reference to the question of selling live game by

game farmers during the close season the following may interest the reader.

The Game Guild had much correspondence in June, 1906, with the *Field* as to the advertisements of their Associates, the proprietors being unwilling to insert advertisements of pheasant poults for sale *during close time.* It was pointed out to them that the industry could not be carried on at a profit if game farmers were not allowed to sell "poults," since in rearing hen birds for stock they were inevitably obliged to rear cock birds also, which require to be delivered at an early date.

In reply to this suggestion the *Field* printed in their following July issues a very clear survey of the whole question of game farms, by J. W. Willis Bund, M.A., LL.B., of which the following is an extract:—

"In advertisements of live birds for sale it has been usual to insert the proviso that the birds shall not be delivered until after the expiration of the close season. The question has lately arisen whether such a statement in the advertisement is necessary, and it would seem that it is not; for, if the position of the game farmer is legal, it is no illegal act on his part to release the game during the close season.

"This brings us to the conclusion that all sale of game by any one, whether a licensed dealer or not, during close time is illegal, but that a person not a licensed dealer may have game in a mew or breeding place in his possession and control during close time, but may not sell it. Such seems to be the law, and, if it is so, it makes the position of the game farmer one of great difficulty. As already shown in a previous article, he cannot, unless he takes out a license to deal in game, legally sell game to the public. If he takes out a license to deal in game, then he brings himself within the mischief of section 4, and it becomes illegal for him to have game in his possession during the close time, even in a mew or breeding place, since it is in his possession or control. It may be admitted at once that a law which

makes it impossible for a man to carry on his trade is one that requires a very strong reason to justify.

"How, then, can game farming be legally carried on? This is by no means an easy question to answer, and it seems only in a roundabout way by two persons, one who is licensed to deal in game, and another who is not. The one who is *not* licensed to deal in game will breed and rear the game—in fact, have the whole management of the farm during the close time, but he will have nothing to do with the sale of the game. The person who will sell the game will be the licensed dealer, who will have to buy from the breeder. He will, in order to evade the section, have to be very careful not to have any of the game in his possession or control during the close season, and not to have bought it or sold it during that time. As soon as the close season is over he can legally buy from the breeder, who can then legally sell to him, and the public can legally buy from him, as he is a person licensed to deal in game. It is obvious that great care will have to be taken by both parties to escape the law, but in this way it can be done, and it would seem to be the only legal way in which it is possible to do it."

The *Field* has since undertaken to insert advertisements omitting all reference to dates of delivery.

The proprietors of *Country Life*, having been approached with the same object, say: "They are disposed to think it rather unjust that the letter of an Act seventy years old should fetter a legitimate industry, which carrying out the spirit of the same Act contributes to the amusement and food supply of the country". They will, therefore, be glad to help those legitimate game farmers who are recognised as Associates of the Guild, and unless prevented by the Government or some legal decision, will during the summer advertise pheasants and poults in *Country Life*.

In April, 1907, a licensed dealer in game was summoned at the instance of the Field Sports Protection and Encouragement Association under the 4th section

of the Game Act of 1831 (selling live partridges during the close season).

On the part of the prosecution it was not alleged that the birds were English, or that they were not Hungarians, but it was contended that the Game Act of 1831 applied as much to foreign live game as to English. Evidently the case had been brought with a view to proving that the traffic in foreign live birds during the English close season was illegal.

It appears the defendant advertised live Hungarian partridges for sale—probably as agent, we are not certain—forwarding the orders received to Hungary, and sending intending purchasers receipts for cheques received on account of the birds.

For the defence it was alleged that the birds came direct from Hungary, and were never in the defendant's possession, and that being so, the sale took place abroad.

The justices pointed out that the sale took place in England and during the close season, and convicted the defendant.

INDICTABLE AND SUMMARY OFFENCES.

The following are practically the whole of the indictable and summary offences dealt with under the Game Laws.

Indictable Offences.

TAKING OR DESTROYING GAME BY NIGHT, Etc.

Unlawfully taking or destroying any game or rabbits by night on any land (open or enclosed), or on any public road, highway or path, or the sides thereof, or at any openings, outlets or gates from any such land, highway or path, or by night unlawfully entering or being on any land (open or enclosed) with any gun, net, engine or other instrument for the purpose of taking or destroying game, after two previous convictions. Night Poaching Act of 1828 (9 Geo. IV. c. 69, sect. 1). Misdemeanour.

USING VIOLENCE.

Any person found committing above offence, assaulting or offering violence with gun, crossbow, firearm, bludgeon, stick, club or other offensive weapon to owners or occupiers of land, their gamekeepers, servants, or assistants. (Section 2.) Misdemeanour.

OFFENDERS ABOVE THREE TOGETHER ARMED.

Persons to the number of three or more together unlawfully by night entering or being on land (open

or enclosed) to take or destroy game, any of such persons being armed with gun, crossbow, firearm, bludgeon, or any other offensive weapon. (9 Geo. IV. c. 69, sect. 9.) Misdemeanour.

KILLING OR TAKING HARES OR RABBITS IN WARRENS.

(Larceny Act, 1861, 24 & 25 Vict. c. 96, sect. 17. Misdemeanour.)

Unlawfully and wilfully between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, taking or killing any hare or rabbit, in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be enclosed or not.

The first, second and fourth offences are triable at quarter sessions, but the third only at assizes. Bail is discretionary in the fourth case, but compulsory in the three first named.

A very important point must not, however, be overlooked before deciding to proceed by way of Indictment, *viz.*, the question of costs. In the great majority of indictable cases at sessions and assizes, as is well known, the cost of the prosecution is defrayed by the county or borough, as the case may be, within which the offence is committed. It is not so with Indictable cases under the Game Laws, for only in the last of the above offences (taking rabbits, etc., in warrens) are the costs paid by the county or borough. In the other cases, seeing the prosecutor has to defray the expenses of the prosecution, and as this is sometimes a costly matter, including as it does not only the costs on the preliminary proceedings when the defendant is committed for trial, but the preparation of the case for trial, brief, counsels' fees, witnesses' and court fees, the mode of procedure is a point well worth consideration, where it is at all practicable to charge the defendant summarily before the justices. Where, say,

four men together are found by night on land taking game, armed with guns, etc. (no violence being used), the proper charge undoubtedly would be under the 9th section of 9 Geo. IV. c. 69, that section specially providing as it does for such an offence, notwithstanding the expense involved by a prosecution, though there could be no objection to the laying of an Information charging the defendants under section 1 of the Night Poaching Act separately, and asking the justices to dispose of the cases summarily. This would, of course, be the least expensive and most convenient way of dealing with the cases, if the proposed arrangement was not vetoed by the justices' clerk, provided also the men were not old offenders and leniency was to be shown. These indictable prosecutions must be instituted within twelve months after the commission of the offence.

Under the 9th section of the Act it is not necessary that all the men charged should have entered the land; if they are all there for the common purpose of taking game, they are all equally responsible if some of the party enter and the others remain sufficiently near to be able to assist. If only one of the men is armed, all are to be considered as armed.

The power of arrest under this statute applies to the owner of the land and the occupier (not the lessee of sporting rights), and their keepers and assistants, but this is more fully dealt with in a subsequent chapter.

In preferring an Indictment for the misdemeanour after two previous convictions for night poaching, care must be taken that the previous charges are identical with the charge contained in the indictment. In Rex *v.* Lines (Court for Crown Cases Reserved, December, 1901) it was held that where a person had been convicted under section 9 of the Night Poaching Act, 1828 (three or more together armed), and the two previous convictions being under section 1 of the Act (ordinary night poaching), the third conviction was quashed, not coming within the meaning of the words "shall *so* offend a third time". The four judges con-

stituting the court all agreed, though Justice Wright said there might be some cases under section 9 which might be cases within section 1.

Judgment was respited at the Bedfordshire Quarter Sessions until the opinion of the above court was known, but the prisoner was detained in custody as he was unable to find bail. The attention of the court was drawn to the fact, and on the judgment being given the prisoner was ordered to be discharged from custody.

Summary Cases.

DAY POACHING OR TRESPASS IN PURSUIT OF GAME, Etc.

(1 & 2 Wm. IV. c. 32, sect. 30.)

The above section, after reciting that as game would become an article which might be legally bought and sold, it was therefore just and reasonable to provide some more summary means than then existed for protecting the same from trespassers, enacted:—

"That if any person whatsoever shall commit any trespass by entering or being in the daytime upon any land in search or pursuit of game or woodcocks, snipes, quails, landrails, or conies, such person shall on conviction thereof before a Justice of the Peace, forfeit and pay such sum of money, not exceeding two pounds, as to the Justice shall seem meet, together with the costs of the conviction, and that if any persons, to the number of five or more together, shall commit any trespass by entering or being in the daytime upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, each of such persons shall on conviction thereof before a Justice of the Peace forfeit and pay such sum of money not exceeding five pounds as to the said Justice shall seem meet, with costs of the conviction. Provided always that any person charged with any such trespass shall be at liberty to prove by way of defence, any matter which would have been a defence

to an action at law for such trespass, save and except that the leave and license of the occupier of the land so trespassed upon shall not be a sufficient defence in any case where the landlord, lessor, or other person, shall have the right of killing the game upon such land by virtue of any reservation or otherwise as hereinbefore mentioned; but such landlord, lessor or other person shall, for the purpose of prosecuting for each of the two offences herein last before mentioned, be deemed to be the legal occupier of such land, whenever the actual occupier thereof shall have given such leave or license; and that the lord or steward of the crown of any manor, lordship, or royalty, or reputed manor, lordship, or royalty shall be deemed to be the legal occupier of the land of the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty."

By far the greater number of offences under the Game Laws are brought under this section (30), for trespassing in pursuit of game or rabbits, if we omit the offence of taking game eggs from nests during the egging season, and not any afford more scope for legal argument. The section of course only applies to the daytime, which is defined in the Act to commence at the beginning of the last hour before sunrise, and conclude at the expiration of the first hour after sunset. The prosecution must be commenced within three calendar months after the commission of the offence, but the proceedings need not be instituted by the owner or occupier of the land, in fact any person may now lay the information, which need not be on oath. The party wishing to avail himself of any consent, authority or other matter of defence, or any certificate or license, must produce or prove same (sect. 42).

The words of the section it will be noticed are "entering" or "being," by which is meant a personal entering on the land as apart from a constructive entry, but an offence may nevertheless be committed on the highway. The public have a right of user of a public

highway for legitimate purposes, but subject to this, the land is considered to be in the possession and occupation of the adjoining owner and occupier, and if a person unlawfully takes game upon the highway, or snipe, quail, landrail, or coney, or commits a trespass in pursuit of it, he renders himself liable to the penalties recoverable, just the same as if he were trespassing in the field on the other side of the hedge. If a person shot from off his own land and killed a pheasant or partridge *on* the land of another adjoining, which bird was from the first on the adjoining land, and goes on to that land to pick up the bird, he commits a trespass under this section, the killing and the picking up being considered as one and the same transaction, the offence commencing with the shooting and ending with the picking up (Osbond *v.* Meadows). Had the bird risen on his own land and he had shot it over his land, and it had fallen on to the adjoining land, he would of course have been justified in following and picking up the bird, though it would be advisable to leave his gun behind. If there are several persons trespassing and one stays outside the field to watch, and gives the alarm, all are equally liable as principals, or those on the land might be charged as principals, and the one outside as an aider and abetter (Passey's case).

A person who urges on a dog from the highway to take game or rabbits there, or on land adjoining, and game or rabbits be caught and appropriated by such person, he would come within the provisions of the statute. If the offence of trespass in pursuit is committed by five or more defendants together, each on conviction is liable to a £5 penalty. It must be always borne in mind that the word "game" in the 30th section means live game, so that a trespass cannot be committed in respect of dead game, and a beater accompanying a shooting party appropriating a pheasant recently killed by one of the guns, would not commit an offence under this section, though under certain circumstances he might be charged with lar-

ceny of the bird, where it had been reduced into the possession of the owner.

It is always a question for the court to determine whether a defendant is in pursuit of game, etc., or not.

The jurisdiction of the justices is often ousted where a question of right is *bonâ fide* set up by a defendant, and as to this the justices must decide, but it is not necessary for the prosecution to establish "mens rea" in the defendant (Watkins *v.* Major), and it is not sufficient for the defendant to say that he believed himself not to be a trespasser, for he must show reasonable grounds for his belief, and it must not be such a claim as cannot be recognised in law, but reasonable.

A defendant convicted of a game trespass and in possession of a gun or game license, forfeits it, though there is nothing to prevent such person from taking out a fresh license afterwards.

Game found upon a person trespassing by day or night, which game has been recently killed, may be demanded and seized by any person having the right to the game upon the land, or the occupier or gamekeeper or servant of either of them (sect. 36).

Trespassers not giving their real names and place of residence or wilfully continuing or returning upon the land, when required to quit and give their names, etc., by the person having the right to the game, or by the occupier of the land, or any gamekeeper or servant of either, or any person duly authorised, may be apprehended by the person requiring, or any person acting under his orders, and conveyed before a magistrate within twelve hours, or such trespassers may be proceeded against by summons. Penalty not exceeding £5 and costs (sect. 31).

Where damage is done in coursing or following hounds without the consent of the owner or occupier of the land trespassed upon, a civil action for trespass would be the remedy, as section 35 of the Game Act specially exempts persons hunting or coursing with

hounds when in fresh pursuit of game, etc., started on other lands, from the penalty provided for offences against section 30. If not a case of fresh pursuit the section would of course apply, and the persons coursing might be charged under either the 30th section, for trespassing in pursuit of game (unless legally authorised in writing under the Ground Game Act), or under section 23 for "using dogs for the purpose of taking game without certificate," if such was the fact. But, query, would it be advisable for a landlord or shooting tenant to prosecute under such circumstances, in a case where the occupier had merely given verbal permission to course? It is suggested not. These circumstances must often arise through ignorance of the Ground Game Act, and most annoying it must be to see the hares, which have been carefully preserved, seemingly wantonly destroyed; though it must not be forgotten that a spiteful occupier might if so determined legally authorise in writing several of his friends to course hares at any period of the year, which would mean a serious disturbance of the winged game and practically put a stop to sport. Under the circumstances a landlord or shooting tenant would be wise it is suggested in not taking proceedings, but in trying what diplomacy with such a tenant would do.

From the above, the reader will have observed that to constitute a charge of trespass in pursuit of game or conies, etc., there must be something more than an ordinary trespass on the land complained of, that is, some evidence of the intention of the defendant to search for or to pursue game, etc.

We have had a case dismissed where a man was found by a keeper on land strictly preserved on which he was carrying a gun in a sporting attitude, and walking up by the side of a bank in the field where there were rabbits, because no game or rabbits were seen by the keeper and the defendant in his defence stating "he was after a blackbird". This is not an uncommon defence, and does not often succeed, but in the case quoted

the two justices sitting at the petty sessions when the case was heard were rectors of adjoining parishes and octogenarians. Needless to say the defendant was somewhat elated with his good fortune, and as much surprised as the court. If walking about with a gun in a sporting attitude on land where it is reasonable to expect game, is evidence of using the gun for the purpose of taking game, subjecting a defendant to a £5 penalty, *a fortiori*, it should be sufficient to satisfy a court where the charge is simply one of trespass in pursuit of rabbits along a bank where they abound.

An offence may be committed under section 30 if a person goes on to his neighbour's land and shoots from there at birds which have been put up on his own land, for here he is undoubtedly trespassing and in pursuit of game (Philpot *v.* Buglar), though very few people with any pretensions to being neighbourly would raise any objection to a gentleman stepping off his own land on to his neighbour's for the purpose of more easily shooting his own pheasants. Where a man fired at and wounded a rabbit which ran off his land on to the land of a neighbour, where it was seen to go into a hole, and was afterwards followed and secured by the man who fired at it, this would be a trespass in pursuit of the rabbit, the man having no right to follow a wounded rabbit on to another person's land.

In Kenyon *v.* Hart the defendant was sporting on his own estate when a pheasant flew up and was shot after it had crossed the boundary fence of another's land, where it fell dead and was picked up afterwards by the shooter. This was held not to be a trespass in pursuit within the section.

A parole reservation of the game to the landlord when he has continually exercised the right, has been held to be a valid reservation (Liversidge *v.* Whiteoak).

In Burrows *v.* Gillingham defendant was charged with trespass in pursuit of game. A report of a gun was heard proceeding from a wood, and defendant was seen

almost immediately to come out of the wood with a gun and some dogs and run off. There was no direct evidence as to seeing him in the wood in actual pursuit. As the justices refused to convict, the case was taken to the Queen's Bench Division, where it was held the justices were wrong and should have convicted, as there was sufficient legal and admissible evidence. Case remitted back to justices to convict.

In Taylor *v.* Jackson (a case stated from the justices in the county of Essex) it was decided that on a charge of trespassing in pursuit of game in the daytime, the sporting rights over which were claimed by a person other than the owner or occupier, where the accused failed to prove the leave of the occupier, it was not necessary for the shooting tenant to prove his right, by the production of the agreement under which he held it. In this case the defendant's solicitor contended that the sporting rights being an incorporal hereditament, could only be vested in a person other than an occupier of the land, by an instrument under seal, and urged that the production of such a deed or lease was necessary to the establishment of the case against the defendants. The justices overruled the point, hence the appeal, in which their decision was upheld.

In Spicer *v.* Barnard (28 L.J.M.C., 176), where the lease reserved the game to the landlord, there appears to be some difference shown between license to kill and direction to kill, and a *bonâ fide* person employed by the tenant to kill rabbits could not be convicted of the trespass in pursuit, the statute not taking away the tenant's right to kill the rabbits, and he also being entitled to have the necessary assistance, but it appears this decision was not intended to mean that the tenant could give leave to any one *to sport* and kill rabbits on the land. The right therefore to kill the rabbits under section 12 of the Game Act by the tenant and those duly authorised by him otherwise than in writing, as apart from the provisions of the Ground Game Act, must not be quite overlooked where the person em-

ployed by the tenant is killing not for *sport*, but in pursuance of a direction to kill from the tenant.

The 12th section above referred to, prohibiting the tenant from killing game on his land, when the sporting rights are reserved to the landlord or let, it will be remembered does not apply to conies.

Among some of the novel practices of trespassing in pursuit of game, by way of supplying a decent dish, at someone else's expense, for Sunday's table, may be mentioned the following :—

A labouring man working on land during his dinner hour provides himself with a good substantial catapult, and having stalked some pheasants who are enjoying themselves near the site of a newly thrashed stack of corn, is seen by two keepers in the employ of the owner of the land, who strictly preserves the game (the neighbourhood being well wooded), to repeatedly use the catapult and hit them broadside very severely. He does not secure any of them, though it is proved to the bench that the catapult in question, produced to the court, is capable of killing. The keepers in the case had noticed a very large number of crippled pheasants near this particular place, some with broken legs and others with broken wings, a difficult matter to explain, until they dropped upon the defendant and put an end to a practice which undoubtedly accounted for the number of cripples, as it was before the 1st October. Defendant was convicted of the trespass in pursuit.

The charge preferred was for trespass in pursuit, as it could scarcely be proved satisfactorily to the bench that the catapult was an "instrument" for taking game, at least that was our impression at the time the information was laid.

The defendant had, of course, a perfect right to be where he was, but so soon as he commenced his endeavour to take game he became a trespasser.

This reminds us of a question casually asked us the other day. A friend of ours was cycling a few miles from Norwich, and while riding down a lane in a rather

secluded place a rabbit ran across the road, and secreted itself in the long grass and bushes on the bank. He jumped off his machine with the intention of killing it, but on second thoughts desisted, not feeling quite sure of his legal position in the matter. A farm labourer coming along, and who had seen all that had happened, was somewhat wroth at the apparent foolishness of our friend in not securing the rabbit, telling him that "anybody was perfectly at liberty to kill anything in the shape of hares or rabbits caught on the roadside". Our friend had a hazy idea that this was not exactly so, but determined to set his mind at rest by consulting us, and after hearing the law on the subject was pleased that he had so desisted.

Had he been seen by the keeper (and some of them are ubiquitous), he might have been summoned for trespassing in pursuit of rabbits; and had a police constable just been rounding the corner as he was taking up and killing the rabbit, he might have had to appear as defendant under "The Poaching Prevention Act" for coming from land where he had been taking game. A pleasant position for an independent gentleman!

One hears sometimes of a sporting tenant, with not too much wood, having his pheasants lured away from some belt on the boundary of his shooting by the neighbouring farmer, who persists in placing old raisins, currants, etc. (for which they have a great weakness), on his land adjoining. There does not appear to be much amiss here, certainly nothing which the law takes any notice of, criminal or otherwise, as the birds being *ferœ naturæ* until reduced into possession, the farmer, if he can entice the birds and induce them to leave his neighbour's wood for his own pastures, is entitled to take them if he can legally reduce them into his possession, but he must of course have a game license to kill or take them.

This is without doubt very annoying to the landowner who has reared and fed the birds, and is looking

forward to his reward. Personally, if the 1st October had not arrived, we should content ourselves with endeavouring to offer the birds greater inducements to remain in and about the belt; but in any event, whether we succeeded in this or not, we should lose very little time after the 1st in giving that particular belt our best attention.

It is suggested, however, that if a man walking by the side of a public road sees a dead rabbit in a snare which had been set by the tenant of the field for the purpose of taking rabbits, and goes into the field and appropriates the rabbit, a larceny would probably be committed, the tenant having reduced the rabbit into his possession by setting the snare and securing it; for when animals *feræ naturæ* are killed upon the soil they become the absolute property of the owner of the soil, and the Ground Game Act having given the tenant the right to kill ground game, when it is killed by him or through him, the property would no doubt vest in him. There would in a case like the above be a separate and distinct killing of the rabbit by one person and a separate and distinct carrying away by another not authorised.

It is not necessary in order to support a conviction for trespass in pursuit of game to prove that the searching, etc., was with the intention to then kill or reduce into possession (Stiff *v.* Billington).

In this case a gamekeeper was seen to leave his master's land with his dog and go on to adjoining land over which a neighbour had sporting rights. The land in question was sown with mustard by the tenant farmer, not the "sporting tenant". When the keeper was detected he stated he had been carrying out his master's instructions and did not object to being caught, as the mustard had been sown to entice his master's pheasants. The justices having convicted the defendant (finding as a fact there was game on the land in question), the court above held the conviction was right, Lord Alverstone, L.C.J., in giving judgment, stating, "the court had nothing to do with the desire

of the appellant to settle the question whether a man had the right to sow mustard in his field in order to attract his neighbour's pheasants, and the decision arrived at by the justices would not be disturbed. The court was asked to say that the words 'search' and 'pursuit' in section 30 of 1 & 2 Wm. IV. c. 32 must be limited to 'searching and pursuing game with an intention to kill them at the time or reduce them into possession'. He thought it would be very dangerous to lay down any such rule as that with regard to the meaning of 'search' and 'pursue'." Justice Lawrance agreed, and the appeal was dismissed.

If there be no evidence of an intention to search or pursue after game the section would not apply, and the matter would resolve itself into an action for damages for trespass. Of course if actual wilful damage is done, though even only to the extent of a penny, to the fences or hedges, criminal proceedings might be taken for the actual damage occasioned, or if the defendant was not a man of straw, it might be worth while, if further trouble was anticipated, to proceed against him for an Injunction to restrain him from further annoyance and trespass.

Sometimes a serious question arises as to the ownership of the land on which an offence is alleged to have been committed. When committed on a field or on the bank of the field no question can very well arise, as the ownership of the field is known and would be probably admitted, but where committed on a bank or fence with a single ditch contiguous to it a question may arise.

Generally speaking, the ditch is looked upon as the property of the owner of the fence, as it is presumed, in the absence of evidence to the contrary, that the person who originally owned the land upon which the fence was erected, cut the ditch at the time the fence was planted on the limit of his property to throw up the soil to make that side of the hedge, taking care not to trespass on his neighbour's soil. On the other hand, rights consistent with ownership might be set up by the adjoining owner, such as felling timber, repairing gates and stiles,

mending fences, etc. This might carry a certain amount of weight, but might not be considered conclusive evidence as against the claimant of the hedge and ditch. In Lord Craven *v.* Pridmore and others, which was a case coming before Mr. Justice Ridley, he decided that while admitting the force of the plaintiff's argument, who relied upon the situation of the ditch as the extent of his property, that this view might be displaced by sufficiently strong evidence of ownership by the other side, of his contention of long user of the fence, which was apparently consistent with a legal title to the fence, and gave judgment for the defendant.

It was hoped something more would be heard of this case in the Court of Appeal, but as his lordship decided the case on a question of fact, the higher court would scarcely interfere with such a finding if asked to do so.

An appeal lies from a conviction in all cases under the Game Laws excepting the Ground Game Act, but in the large majority of cases the fine is not leviable by distress in default of payment.

FIVE OR MORE TRESPASSERS USING VIOLENCE IN HIS MAJESTY'S PARKS, ETC.

(Section 32 of the Game Act of 1831.)

Where any persons to the number of five or more together shall be found on any land or in any of His Majesty's forests, parks, chases, or warrens, in the daytime, in pursuit of game or woodcock, snipe, quails, landrails or conies, any of such persons being armed with a gun, and such persons or any of them shall by violence, intimidation or menace, prevent or endeavour to prevent any person authorised therein mentioned from approaching such persons so found, or to tell their or his Christian name, surname or place of abode respectively as therein mentioned, such persons so offending by such violence, intimidation or menace as aforesaid, and every person then and there aiding or abetting such

offender, shall upon being convicted thereof forfeit and pay a penalty of not exceeding £5 and costs, in addition to and independent of any other penalty to which any such person may be liable for any other offence against the above Act.

COMING FROM LAND WITH GAME NETS, ETC., IN POSSESSION.

(Poaching Prevention Act, 1862.)

This Act provides "that it shall be lawful for any constable or peace officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person and having in his possession any game unlawfully obtained, or any gun, part of a gun, or nets or engines used for the killing or taking game; and also to stop and search any cart or other conveyance, in or upon which such constable or peace officer shall have good cause to suspect that any such game, or any such article or thing is being carried by any such person; and should there be found any game or any such article or thing as aforesaid upon such person, cart or other conveyance, to seize and detain such game, article or thing; and such constable or peace officer shall in such case apply to some Justice of the Peace for a summons citing such person to appear before two Justices of the Peace assembled in petty sessions. And if such person shall have obtained such game by unlawfully going on land in search or pursuit of game, or shall have used such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding £5, and shall forfeit such game, guns, part of guns, nets and engines;

and the justices shall direct the same to be sold or destroyed, and the proceeds of such sale, with the amount of the penalty, to be paid to the treasurer of the county or borough where the conviction takes place; and no person who, by direction of a justice in writing, shall sell any game so seized, shall be liable to any penalty for such sale; and if no conviction takes place, the game, or other article or thing, as aforesaid, or the value thereof, shall be restored to the person from whom it had been seized."

This section does not repeal any of the provisions of the previous statutes relating to offences against the Game Laws, but provides an additional remedy against poachers, as may be seen from the title.

Game in this section means "hares, pheasants, partridges, eggs of the two last-named birds, and woodcock, snipe, rabbits, grouse, black or moor game".

"Highway" and "street," as mentioned in the section, require no comment, but as to the words "public place," some explanation may be given, as questions often arise as to how far they extend. "Public place" then is intended to mean a place analagous to "highway" or "street". The question as to what a "public place" is, under the Poaching Prevention Act, does not appear to have been decided, though under the Vagrant Act, a railway station platform has been held to be one. Convictions under the Poaching Prevention Act have taken place at county petty sessional courts where seizures have been effected on railway platforms, but in cases of "fresh pursuit" only. Generally speaking, the words should be limited to such a place as a police constable in the execution of his duty is usually in the habit of patrolling.

The police have no power under the Act to search a person who is starting out on a poaching expedition, as such person could not be said to be "coming from land," but he may search any person "coming from land," if he has good cause to suspect him of having been on land for the purpose of taking game, and of having

game or instruments used for the taking or killing of game upon him, or any person aiding or abetting such person. It is not necessary to prove to the justices that the person suspected had actually been unlawfully on the land pursuing game. The search may be either by day or night, and must take place on the "highway," "street," or "public place," though in hot pursuit may take place in another place, and a conviction has been upheld where a defendant, who was in possession of rabbits on a highway, on seeing a police constable, leaped over a fence, and being pursued threw them down in a field some distance from the highway. If the game is seen or felt upon the person afterwards charged, the question of search would be immaterial. If a conviction takes place the justices are to order the game, etc., to be sold or destroyed, but if the proceedings result in a dismissal, it would, if claimed by the defendant, be returned to him. Where the defendant denied being in possession of the game, the subject of the inquiry, and repudiated ownership, the prosecutor would probably retain possession, and rightly so, even though the case were dismissed, and risk the consequences, as is generally adopted.

If the constable has good cause for suspicion in making his search he would be justified in so doing, though no offence could be proved. There must also be a seizure of the game or gun, etc., to secure a conviction, and the constable who seizes must apply for a summons, as the proceedings must take that form. A warrant under this section cannot be granted.

The court must, however, be satisfied from the facts that the defendant had unlawfully been on land where he had obtained the game, or if in the case of possession of a gun or net, etc., that such had been used for the unlawful taking or killing of game.

Many curious points often arise under the section now being dealt with. Where a man is stopped on the highway coming from land where he has undoubtedly been in search of game, and is carrying a brace of

pheasants or rabbits in his pockets, and after being searched by a police constable, the game is seized, no difficulty would probably arise, particularly if the man had a gun or nets for taking game and had no leave or license and does not give a satisfactory account as to how he came by what is seized. But, say a number of rabbits are seized from a cart by a police officer, who had reason to suspect the individual in charge, who was connected with poachers. Undoubtedly the game was poached, but bringing home the case to the defendant is sometimes a difficult task, especially if he is an old hand, declining to account for the possession of the rabbits, and telling the officer that he has come by them lawfully, and that if they are seized the officer must take the consequences. After the seizure the question arises, how is the man to be charged under the Act, whether as principal (having been on the land himself and obtained the rabbits) or as an aider and abetter, accessory to some person who has unlawfully obtained the game. If a principal, a doubt might arise in the mind of the prosecution as to whether it would be considered by the court as even practicable for the defendant to have actually committed the offence of having been on the land and obtained the game whilst having charge of a horse and cart, as it might be strongly urged as against a conviction that it would naturally require two or more persons to manipulate the nets, which must have been used in the taking of a number of rabbits.

If as "accessory" what about the "principal," and who would the aider and abetter be accessory to, where the principal is unknown; as in the opinion of some magistrates and their clerks the principal offender should be disclosed prior to proceedings being commenced against an "accessory," under this section, though happily this is not always insisted upon.

This section without doubt, especially in cases like the last named, gives the police officers and the clerks to justices considerable difficulty when an Information

is being prepared, but as the clerks are always particularly well versed in such matters, the trouble is as a rule generally easily surmounted.

Most ingenious defences are often raised under this section on the question of "suspicions of the officer seizing," the "search and the seizure," and conflicting and unsatisfactory as are the various decisions in the High Court on the above points, shortly it may be taken for granted that, if the justices satisfy themselves that the suspicions of the officer are well founded, the search and the seizure in order, and that the game has been unlawfully obtained, or that the guns had been unlawfully then recently used for the unlawful killing or taking of game, there would not be much difficulty in arriving at a decision adverse to the person charged.

We have not thought it necessary to trouble the reader with a digest of the various decisions in the High Court on the various points raised under this section, on account of their conflicting nature.

SPRING TRAPS AND POISON.

(Ground Game Act.)

Section 6 of the above Act enacts that no person having the right of killing ground game under this Act or otherwise, shall use any firearms for the purpose of killing ground game, between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall, for the purpose of killing ground game, employ spring traps, except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding £2.

Ground game means hares and rabbits, and the words "or otherwise" include tenants with sporting rights at common law on the land, but exclude landlords in possession (Saunders *v.* Pitfield). In Smith *v.*

Hunt it was held the prohibition in the section as to employing spring traps did not apply to an owner occupying his own land when the sporting rights were not let by him.

An owner who has leased the land and reserved the sporting rights, having thus only a concurrent right to the ground game, could not use spring traps in the open.

If an "occupier," over whose lands the sporting rights are reserved to the landlord, invited two or more persons to kill ground game on the land with firearms, he might, it is conceived, be proceeded against for aiding and abetting them.

Many "occupiers" under the Ground Game Act, where the game is reserved to the landlord, let for a lump sum the rabbits to rabbit catchers and vermin killers, but the man employed must be authorised in writing, to be legally entitled to kill them, and if he is not so authorised he would be a trespasser under the 30th section. If authorised in writing he must comply with the provisions of the Ground Game Act, and set his traps accordingly. If he does not, being within the provisions of the Act, he might be summoned, as the "occupier" himself might, for setting spring traps otherwise than in rabbit holes. If, however, the game was not reserved to the landlord, but the full right enjoyed by the tenant, it would appear the Ground Game Act would not apply, and the traps might be set independent of that Act.

An assistant to a vermin killer, accused with his principal (which latter is authorised in writing), of using spring traps in the open, might be charged with aiding and abetting the principal, as such assistant could not be a person entitled to kill ground game under the Act; though probably the better way to charge him would be under the 30th section of the Game Act (trespass in pursuit), as it might be questioned whether he could "aid and abet" in an offence he could not be charged with as a principal.

The onus in each case lies on the defendant to prove the trap was set in the hole.

The period of time prohibited in the section is the same as the usual night poaching hours; and with respect to the employing of the traps it may be further mentioned that these must be set in the *bonâ fide* scrape of the hole, it having been decided by the Scotch Court of Justiciary that where rabbits had scraped below a wire fence in their passing from one side of the fence to the other, it was not a rabbit hole within the meaning of the section.

There does not appear to be any authority under the Ground Game Acts to seize and retain the spring traps found set out of rabbit holes.

The offence of employing poison in the section seems to have been necessary, as the 1 & 2 Wm. IV. c. 32, sect. 3, did not include rabbits, but referred only to the destruction of "game," *i.e.*, "putting poison with intent to destroy or injure game on any land where game usually resort, or on any highway," rendering offender liable to a penalty of £10. By 26 & 27 Vict. c. 113, sect. 2, it is provided, as to poison, that every person who shall offer or expose for sale or sell any grain, seed, or meal, which has been steeped or dipped in poison, or with which any poison or any ingredient or preparation has been so mixed as thereby to render the same poisonous and calculated to destroy life, shall in either case for every such offence forfeit on conviction not exceeding £10.

By section 3 any person who shall knowingly and wilfully sow, cast, set, lay, put, or place, or cause to be sown, cast, put, or placed into, or upon any ground or other exposed place or situation any such grain, seed, or meal so steeped or dipped in poison, or with which poison or any ingredient or preparation has been so mixed as thereby to render such grain, seed, or meal poisonous or calculated to destroy life, shall on conviction forfeit not exceeding £10.

By section 4 of the Act nothing is to prevent the

offering for sale or selling of any solution for dressing any grain or seed for *bonâ fide* use in agriculture only, or for the sowing of such grain or seed.

As it is necessary under the Game Act for the prosecution to prove the intent to kill game (which is generally somewhat difficult of proof), and the 26 & 27 Vict. c. 113 does not require such proof, the latter Act would seem to afford the better protection.

It would be a question for the justices to decide as to whether or not the poison was used for the purpose and with the intention to destroy game.

SPORTING AT UNLAWFUL SEASONS.

Killing Game on a Sunday or Christmas Day.

(1 & 2 Wm. IV. c. 32, sect. 3.)

"If any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game on a Sunday or Christmas Day, such person shall, on conviction thereof before two Justices of the Peace, forfeit and pay for every such offence such sum of money, not exceeding £5, as to the Justices shall seem meet, together with the costs of the conviction."

Killing Game in Close Season.

Section 3, proceeding as follows, further enacts:—

"And if any person whatsoever shall kill or take any partridge between the 1st day of February and the 1st day of September in any year, or any pheasant between the 1st day of February and the 1st day of October in any year, or any black game (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton) between the 10th day of December in any year and the 20th day of August in the succeeding year, or in the County of Somerset or Devon or in the New Forest aforesaid between the 10th day of

December in any year and the 1st day of September in the succeeding year, or any grouse commonly called red game between the 10th day of December in any year and the 12th day of August in the succeeding year, or any bustard between the 1st day of March and the 1st day of September in any year, every such person shall, on conviction of any such offence before two Justices of the Peace, forfeit and pay for every head of game so killed or taken such sum of money, not exceeding £1, as to the said Justices shall seem meet, together with the costs of the conviction."

"Taking" under this section means "catching," but if the game is accidentally caught either in a trap or by a dog it might not be an unlawful taking, the gist of the case being the part the defendant acted under the circumstances. If his action warranted the belief that he intended to liberate the game caught, either by trap or dog, then no conviction would follow; but if the defendant appropriated the game, it would make all the difference. The killing and taking are only one offence, though of course a person may take without killing.

The question as to whether a gun was used or not is for the justices to decide, as it has been decided, as before mentioned, that walking about with a gun in a sporting attitude where there was a reasonable possibility of finding game was evidence of using the gun, if there was an intention to kill game (Hebdon *v.* Hentley). A snare has been held to be an "instrument" for taking game, and is within the section.

An offence is often committed against this section by those who know the law and ought to know better, but occasionally matters are brought to light, and adequate fines inflicted upon the delinquents. We remember the case where the son of a landowner, who farmed his estate, was charged with using snares on Sunday, which he had apparently set on the previous Saturday, and allowed the snares to remain during the Sunday, when several partridges were snared in them, the defendant calling the following morning and taking the birds out

of the snares. The evidence was ample to sustain a conviction, being supported by Allen *v.* Thompson, which case decided that a defendant might be convicted without any evidence of his having been on the land during the Sunday. It is a most unsportsmanlike act to set a quantity of snares over a field for the purpose of taking game, either pheasants or partridges; and where they can be proved to be allowed to remain on Sunday and birds are caught, fines will invariably result if proceedings are taken with that view. We have heard of many complaints of small tenant farmers who take out a game certificate persisting in setting large numbers of these snares on their lands and in the hedges, but an intimation from their landlord to desist has generally had the desired effect.

SPORTING WITHOUT CERTIFICATE.

(1 & 2 Wm. IV. c. 32, sect. 23.)

No person shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game without being authorised so to do by game certificate. Penalty not exceeding £5 (with costs).

It is necessary to avoid the penalty that a person should have *obtained* the license, and not merely have paid the duty, before he begins to sport, or an offence will be committed, and a conviction before the justices at the instance of the police or a common informer will not exempt the defendant from a further penalty at the instance of the Commissioners of Inland Revenue, which is a cumulative penalty. The Commissioners are, however, somewhat lenient in matters of this kind, and invariably give a defendant who has been convicted of the offence of trespassing in pursuit of game or using a gun, etc., an opportunity of voluntarily paying a compromised penalty stated at the time, and if this is paid further proceedings are abandoned.

This is often considered by sportsmen most objection-

able. They have to take their licenses out year by year before they shoot, and yet poachers and others who go sporting about without a license, sometimes with a 10s. license to carry a gun, get their sport for nothing, till caught trespassing in pursuit, when a small fine is inflicted by the justices, as it is very seldom a second charge is preferred at the same time for sporting or killing without license. If a second charge were preferred for the sporting or killing without certificate and a conviction followed, the Commissioners would invariably hold their hand, not being desirous of proceeding for the cumulative penalty, and thus prosecute the defendant a second time for practically the same offence. Thus it will be seen that the better course to adopt when deciding to proceed against a defendant who commits a trespass in pursuit of game, and uses a gun for the purpose of taking game, or actually takes game, without having a certificate authorising him to do so, is to simply lay an Information for the "game trespass," and leave the Commissioners of Inland Revenue to take the necessary proceedings for the recovery of their penalty for either the using of the gun for taking, etc., or for killing, without certificate.

Killing hares, under the provisions of the Ground Game Act, 1880, does not, of course, necessitate the taking out of a license to kill game. A person may be convicted under this section (23) of killing or taking game without certificate, if he has no certificate, during the close season, and he would, of course, be further liable under section 3 for killing or taking game during the close season.

Under the 23rd section of the Game Act, 1831, an information for "sporting without certificate" may very often be preferred against a defendant where it is not practicable to lay any information under the Night Poaching Acts, for using dogs by night for the purpose of taking hares (the dog not being an instrument for taking game under the last-named Acts), or for a trespass in pursuit of game (section 30), such section

not applying to the night-time, assuming, of course, that the dogs were coursing hares and unsuccessful in their endeavours, and that the men were either on the land or inciting the dogs to pursue the game. Should the hare be caught and appropriated by the owner of the dogs, there would be little difficulty in securing a conviction for taking or destroying game under the Night Poaching Acts. First portion of 9 Geo. IV. c. 69, sect. 1.

The full effect of this 23rd section has very often been overlooked in cases where dogs have been used at night, especially in those cases where the hare has been coursed by the poachers' dogs but not caught.

A difficulty sometimes arises where several defendants are charged with an offence of killing game without license, where it cannot be satisfactorily proved who actually killed the bird in question. In the case of Hunter *v.* Clarke and others several men were charged with killing game without a license, and the information having been dismissed, the Inland Revenue authorities, who prosecuted, appealed by way of a special case for the opinion of a superior court. It appears that all the defendants carried guns and were ranging a field in which wheat had been cut but some was still standing. Four pheasants rose in succession out of the wheat, shots were fired at two of them, and all the defendants pointed their guns at one of the birds, when three guns were discharged. One of the defendants had a license to kill game, two had a license to carry a gun and two not.

For the prosecution it was contended that each of the defendants was in pursuit of game, and having regard to the whole of the evidence given, was liable to conviction.

For the defendants it was contended, and believed by a majority of the justices, that they were in search of rabbits, that in so far as they pointed their guns at the pheasants but did not fire them, they acted on the impulse of the moment and without any intention of

firing, and that the evidence failed to show which of the defendants actually fired at the pheasant, or either of them.

The majority of the justices dismissed the information on the following grounds:—

That the particular person who shot the pheasant could not be identified, and

That they believed the defendants went to the field for the purpose of shooting rabbits and not to shoot game.

On the appeal, in the King's Bench Division, it was urged on behalf of the appellant that the justices were wrong. They seemed to have thought that because the defendants went primarily with the intention of killing rabbits they were not liable, but at the moment they fired at the pheasant they were in pursuit of game. As to the second point, each defendant who fired at the pheasant was liable to a conviction, and the identification of the particular shot which killed the bird was not necessary.

The respondents did not appear.

Lord Alverstone in giving judgment said: "This case must be remitted to the justices to convict the three defendants who were proved by the evidence to have shot at the pheasant".

Justices Darling and Channell concurred.

HARES.

(55 Vict. c. 8, sect. 2.)

This statute makes it unlawful to sell or expose for sale any hare or leveret during the months of March, April, May, June or July. Penalty not exceeding 20s. The Act does not of course apply to foreign hares imported and sold here or exposed for sale during the above months.

In England hares and rabbits may be killed all the year round, but as stated above, hares and leverets

must not be sold or exposed for sale during the above-mentioned months.

So far, however, as moorlands are concerned, the Act of 1880, sect. 1, sub-section 3, only authorises the killing of hares and rabbits on moorlands and unenclosed lands (not being arable) from 11th December to 31st March, but this does not apply to detached portions of less than twenty-five acres adjoining arable lands.

By the Ground Game Amendment Act of 1906, which came into operation on the 1st of April, 1907, notwithstanding the above sub-section of the Act of 1880, the occupier of lands to which that sub-section applies, shall without prejudice to his existing rights under that Act, be entitled between the 1st September and the 10th December, both inclusive, to exercise the right of killing and taking ground game, otherwise than by the use of firearms. By section 3 of the Act of 1906, section 3 of the Act of 1880 shall not prevent the occupier of moorlands, and the owner of such lands, or the person having the right to the game thereon, from making and enforcing agreements for the joint exercise, or the exercise for their joint benefit, of the right to kill and take ground game, between the 1st September and the 10th December both inclusive in any year.

Hares must not be killed on Sunday or Christmas Day, and are further dealt with under the heading of ground game.

SELLING GAME WITHOUT LICENSE.

(1 & 2 Wm. IV. c. 32, sect. 25.)

Any person not having a license to kill game (except he be licensed to deal in game) selling or offering for sale any game to any person whatsoever, or any person authorised to sell game by virtue of a license to kill game, selling or offering for sale any game to any person whatsoever, except a licensed dealer (sect. 25). Penalty not exceeding £2 for every head of game.

Any licensed dealer buying or selling or knowingly having in his house, etc., possession or control any bird of game after ten (one inclusive and other exclusive) days from the time when it shall be unlawful to kill or take such game, or *any person not being a licensed dealer* buying or selling any bird of game after ten days from the time when it shall be unlawful to kill or take such game, or knowingly having in his house, etc., any bird of game (except birds kept in a mew or breeding place) after forty days from same time. Penalty, £1 for every head of game (sect. 4).

Buying game except from licensed dealers, and licensed dealers buying from uncertificated persons, or not having license board affixed outside premises, or selling game at other than shop, etc., where board affixed, renders offender liable to £10 penalty.

The Local Government Act of 1894 provides that the powers, duties and liabilities of justices out of quarter sessions shall be transferred to the Rural or Urban District Council by whom game certificates are granted, and on their production the Excise authorities grant the license to deal in game. This license expires on the 1st July in each year, and must state on the face of it the house, shop or stall where the game is to be sold. An exception is of course made in the case of innkeepers selling for consumption in their own houses to their customers.

A license to deal in game cannot be granted to a licensed victualler, beerseller or the owner, guard, or driver of a mail coach or conveyance used to convey mails, or to a carrier or higgler or a person employed by any of the above, and a licensed victualler or innkeeper must of course obtain his game from a person duly authorised to sell. A license is not required to sell simply woodcock, snipe, quail, landrail, rabbits or deer.

A dealer in foreign game must now make the necessary application for a certificate to a District, Urban or Town Council, as the case may be—since the Customs Act of 1893 over-riding the old law as stated in Pudney

v. Eccles. A person cannot sell game to a licensed game dealer unless he shall have taken out a full £3 license, except a gamekeeper acting under his master's express written authority on his master's account in respect of game killed on his master's land (or over which he has the right of sporting). If the game is otherwise killed the keeper must have a full £3 license.

A game dealer purchasing foreign game from a person not licensed to sell or kill game would incur no penalty in so doing. What would be the use of inflicting a penalty on a person buying French partridges from a Frenchman, where the Frenchman had no license to kill or sell game, when probably a license is not required at the place from which the game is obtained?

A person licensed cannot sell at more than one house, shop, stall, etc., without being further licensed to do so, and any offence on the part of the game dealer in contravention of the Game Act, renders the license void, but there appears to be nothing to prevent a person who has been convicted under the Act, from applying for another license which would expire on the following 1st July. Whether it is absolutely necessary for the person to apply to the local authority, and obtain a fresh certificate to present to the Excise before they would grant him a second license for the unexpired period of the year, is a question, but from past experience we think the Excise would grant the license on payment of the £3, their opinion being that their previous £3 license only was forfeited, and the certificate not affected. Licensed dealers commit an offence against section 28 of the Game Act if they buy live game (which would include tame game) from persons not authorised to sell it, the onus being on the dealer to ascertain if the seller could legally sell.

Under section 4 of the Game Act persons other than licensed dealers in game may keep birds of game in a "mew" or "breeding place" during the close season, though dealers are liable to a penalty for

being in possession of game at such a time. If dealers were allowed to buy tame game from persons who had no license to kill or sell game the practice might, and no doubt would, encourage the theft of pheasants from pheasantries.

A dealer may purchase from an "occupier" under the Ground Game Act hares killed by him, or persons authorised by him under that Act, and having no license to kill game.

Game may also of course be purchased by a licensed dealer in game from a person authorised to sell game under an order of justices made under the provisions of the Poaching Prevention Act, where the game has been seized under that Act on the "highway," "street," or "public place," and the person in possession of it has been convicted, and the game ordered by the justices to be sold.

A question has sometimes been raised as to whether a woman was entitled to hold a license to deal in game. To some this may seem a curious question, but it is a much more difficult one to answer than it appears to be, inasmuch as in the form of license in the schedule to the Act granting the license, reference is made to "him" and "his". The schedule being a portion of the Act, it might very properly be inferred that the grant must necessarily be to a man, notwithstanding the "Acts of Parliament abbreviation of 1850," enacting that words importing masculine gender should be deemed to include the feminine, the "singular" the "plural" and so forth, and the further Acts bearing on the subject. It is a matter not without doubt, though it has always, we believe, judging from experience, been in favour of a woman holding a license when granted by the justices, and since the Local Government Act of 1894, by the local authority there referred to, on the production of whose grant the Excise have never hesitated to issue their license.

Surely it was never intended by the legislature to prohibit the widow of a deceased game dealer from

succeeding her husband in his business, where fully competent.

We are inclined to think that the framer of the Act, in drafting the form annexed to it, inserted the words "him" and "his" mechanically, and that it passed unnoticed and so received the Royal Assent.

At all events we should not hesitate to make the necessary application for a female, if instructed, and should hope to be successful.

TAKING HARES OR RABBITS IN WARREN.

(24 & 25 Vict. c. 96, sect. 17, Larceny Act, 1861. Misdemeanour.)

Unlawfully and wilfully between the expiration of the first hour after sunset and the beginning of the last hour before sunrise taking or killing any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be enclosed or not. (This portion of the section has been previously referred to amongst the indictable cases.) And unlawfully and wilfully between the beginning of the last hour before sunrise and the expiration of the first hour after sunset taking or killing any hare or rabbit in such warren or ground or at any time setting or using therein any snare or engine for the taking of hares or rabbits. Penalty not exceeding £5.

Nothing in this section is to affect a person taking rabbits in the daytime on any sea bank or river bank in the County of Lincoln, so far as the tide shall extend, or within one furlong of the bank. This of course only exempts persons from the penalty imposed by *this* section and not from section 30 of the Game Act (the ordinary section for trespassing in pursuit of game or rabbits). The above section 17 of the Larceny Act does not repeal or interfere with section 1 of the Night Poaching Act of 1828, which only relates to open and unenclosed land, and it is entirely for the justices to decide whether the land in question

is a warren or not (Bevan *v.* Hopkinson). If the defendants are actually found committing either of the above offences under section 17 they may be immediately apprehended without a warrant (section 103).

TAKING OR DESTROYING EGGS.

(1 & 2 Wm. IV. c. 32, sect. 24.)

Any person not having the right of killing game upon the land, nor having permission from the person having such right, wilfully taking out of the nest, or destroying in the nest, the eggs of any bird of game or swan, wild duck, teal or widgeon, or knowingly having in his possession any eggs *so* taken.

This is undoubtedly of all offences against the Game Laws the most disastrous to the preserver of winged game, striking as it does at the root of all sport, and judging from the enormous quantities of game eggs formerly trafficked in, it naturally behoves those who possess sporting rights to guard them jealously.

The English partridge is a general favourite with sportsmen, being essentially the tenant of the cornfields, and common to all the corn counties in England, more abundant perhaps in those counties where the labours of the ploughman are most extensive. The hen bird commences to lay her eggs about the middle of April, when the weather is favourable, but it is often well into May before the egging season becomes general.

On account of the large number of eggs laid it may with safety be said that there is not much fear of the bird being exterminated. The egging season of 1906 was, however, as disastrous as it possibly could be, thousands of young birds being drowned by the severe storms, and in many instances the parent birds as well. Indeed it was reported that in Norfolk 400 young birds had been destroyed in one field. Fortunately, however, such was not general throughout that county, and it is not at all likely that even all the "persecution" the

bird meets with from the sportsman will drive it from its haunts, rising as it does when disturbed to settle again in the same field.

> If a partridge had but a woodcock's thigh,
> 'Twould be the finest bird that ever did fly;
> If a woodcock had but a partridge breast,
> 'Twould be the finest bird that ever was dressed.

On the edible qualities of the bird it is unnecessary to dwell here.

We have heard of the theory of collecting partridges' eggs and substituting artificial ones in the nest and allowing the birds to sit on the latter until their own eggs (which have been placed under hens) were on the point of hatching, and could be restored to the nests. It was supposed by these means the partridges' eggs were better protected from the attacks of vermin, but there is no evidence that this has been successful in practice.

No doubt much has been done in the counties of Norfolk, Suffolk, Essex, Bedford and Cambridge and other counties where associations exist for the protection of game, to preserve the pheasant and partridge and to check the illicit traffic in their eggs, but much still remains to be done in other counties which might easily be accomplished by the co-operation of persons interested.

In addition to the eggs of birds of game, section 24 also covers the eggs of swan, wild duck, teal and widgeon.

To secure a conviction the prosecutor must prove either a taking out of the nest, a destroying in the nest, or the defendant in possession of eggs *so* taken.

The word "so" in the section means a great deal, and is very often overlooked not only by laymen but sometimes by the legal practitioner, and from its introduction into the section will be seen the important bearing it has. To be in possession of game eggs, ap-

parently unlawful, is not legally sufficient to bring the presumed offender within the section now being dealt with, unless coupled with some evidence as to the abstraction from the nests, and this section must not be confused with section 2 of the Poaching Prevention Act, where a search is made by a police officer on a highway, street or public place and a seizure is effected. It may also be noted here that a person trespassing in search of game eggs commits no offence under section 30 of the Game Act (game trespass), as he is not in search or pursuit of live game, and many preservers of game have met with some disappointment on finding such to be the law.

We remember a case where a gamekeeper after watching a poacher trespassing in search of game eggs and brushing the fences with a stick, accosted him on the land, searched him and found nothing, and reporting the case to his master was directed to summon for the next petty sessions. The keeper accordingly attended the magistrates' clerk's office and explained the circumstances of his case. He was told that no offence was disclosed, which seemed to him incredible, and so his master was again interviewed and the keeper was directed to obtain independent advice. He laid the details before us, and we were bound to endorse what the magistrates' clerk had advised. Had the keeper been more experienced he would have laid low, watched the man a little longer, and then probably have had the satisfaction of seeing him take eggs and of getting him convicted for so doing. The proper course under such circumstances is to wait until an offence has been committed and then accost the party trespassing.

Happily cases of wanton destruction of game eggs are undoubtedly on the decline, in fact are of rather rare occurrence, and apart from the ordinary idler of the village and the confirmed poacher, only occur when some ill-feeling exists against the landlord or sporting tenant for some real or imaginary grievance. It is anything but a pleasant sight to see several partridges' nests

containing eggs all smashed, apparently by some evil-disposed person's foot having been placed therein, and that not accidentally. In justice, however, to the tenant let it be said that he was not the person responsible for it or even suspected. Although suspicion was very strong against one individual, for various reasons no proceedings were taken and the matter allowed to drop. Fortunately it is very seldom that any friction exists between the landowner or the sporting tenant, and the tenant of the land shot over, good feeling being reciprocated, but where this is not the case considerable annoyance and sometimes damage may be caused during the egging season in a variety of ways.

Of the many devices to avoid detection adopted by traffickers in illicitly-obtained game eggs, much might be written and said, but perhaps a few only need be mentioned here.

A year or two back the most common method of transit from the parish where the eggs were obtained to the larger centres in Norfolk (we cannot speak as to other counties) was the false bottom in cart. This becoming too well known to the energetic police, false bottoms to crates and large stone bottles were adopted, the bottoms of which would screw off, more particularly used when despatched by carrier, but these dodges are now getting stale and considered a little too hazardous to risk.

In 1906 a man was strongly suspected of trafficking in game eggs purloined from the land in the neighbourhood of the village in which he lived, but though he had often been searched by the police on his way to Norwich he was never found to have any game eggs upon him. The mystery was, however, solved at last, the man's wife having brought the eggs into Norwich under the seat in her child's perambulator.

Pedestrian bagmen often run the gauntlet, and have been known to admit bringing safe to its destination a box of game eggs, charging a small toll for the service rendered.

Near Holt (which was a hotbed of the poaching fraternity) a hawker admitted to bringing 140 "shortens," as partridges' eggs are there called, collected at Binham, to Holt, wrapped up in a box in a roll of cloth, and reaching his destination without difficulty.

It may surprise some of my readers to know that in a certain parish in Norfolk a somewhat novel method of collecting illicitly-obtained game eggs prevailed for several years. A dealer in game food had an agent, who, whilst advertising the food in the rural districts, at the same time advertised that he was prepared to give so much per dozen for pheasants and partridges' eggs, his bills being deposited in the village public-houses. The practice was a shortlived one, and gave colour to the statement freely circulated at the time that a large order had been given (10,000 eggs) for the stocking of a gentleman's preserves, and the eggs had to be obtained.

Without doubt, this was putting temptation into the mind of the countryman working on or near the land, and encouraging him to abstract what eggs he could from the banks and land on which he was working, as well as the man cultivating a few rods of land as a garden, upon which a partridge might have nested.

Not a hundred miles from East Dereham there is a public-house which was formerly resorted to by the idlers of the village during the egging season, who were known to have in their pockets more cash then than at any other period of the year. In one of the rooms in this house was a recess in which was a locker largely used during the season for the depositing of game eggs by those in the secret, an understanding existing between the landlord and his sly customers. Whenever they had any eggs to dispose of, they were placed in this locker by the depositor, and on his return shortly afterwards he would find the eggs removed and their value in cash. It is said thousands of partridge and pheasants' eggs passed through that locker every season, without any agreement between the landlord

and his friends, but each relying on the other and the custom at the house, all interested being perfectly satisfied with the bargains. This is happily a thing of the past.

By way of assisting in the identification of game eggs, where they are at all likely to be purloined during the egging season, much may be said in favour of "marking".

If nests are easy of access to the poacher, where footpaths are at all numerous, the experiment of "marking" may be considered advisable. The best method to adopt is undoubtedly stamping the initials of the proprietor with invisible ink (which on being subjected to the proper test reappear), with a pneumatic stamp which readily adapts itself to the shape of the egg without injury to it, as might be caused by other methods sometimes resorted to. This stamping has never been known to be the means of making the bird forsake its nest.

This practice was, without the slightest doubt, the means of bringing home to a defendant the charge of being in the unlawful possession of over 600 game eggs, which but for the initials on several of them, could never have been identified. Of course it is not necessary to stamp each egg, but only two or three of a full nest. The stamping instrument can be obtained from Spratts Patent, Ltd., 24 and 25 Fenchurch Street, London, E.C., for a very trifling sum (5s. complete), and the pencil now called "Tecko" may be purchased at the same address, price also 5s. complete.

Against the practice of marking is perhaps the inconvenience to the keepers, the possibility of disturbance to the laying bird by going too often to the nest, or the probability of leaving some footmark on the bank near the nest, by which it is betrayed to the idler of the village or the poacher from the town, who, if they happen to be old hands at the egging business, will carefully examine the eggs for marks before appropriating them.

Woe to any nest of eggs if a mark is detected upon any of them, as the sole of the man's boot would soon be in the nest.

This marking principle has only recently been brought to the front, and although those most interested have not unanimously approved the principle, it is getting more generally known and adopted.[1]

To some it may seem a more natural state of affairs to allow the nests to remain undisturbed, and take the risk involved, putting on an additional hand to assist the watchers and keepers. Of course, if the purloining of the eggs continue, and it is decided to find the culprit if possible, "marking" might materially assist where there is a possibility of a seizure being effected, but this should be done with invisible ink.

It is a very common practice for landowners and sporting tenants in Norfolk to pay a small sum, generally about a shilling, to any person who informs the keeper of a nest of game eggs found in an exposed situation overlooked by the keepers and likely to come to harm either in one way or another. This is no doubt a wise and businesslike proceeding, especially when the eggs are allowed to remain in the nest and the keeper given an opportunity of taking them himself; but instances often occur of the eggs being taken by the finder to the keeper. This raises considerable doubt sometimes as to whether the eggs have been taken from the place alleged, or from some other nest which ought not to have been disturbed, besides putting it within the power of the finder, if so disposed, to appropriate them, where he does not meet with a keeper before he reaches his home.

Without doubt every year large quantities of partridges and pheasants' eggs are trafficked in in the

[1] In some counties where a Game Association is in vogue, each member is, we understand, given an initial (or two initials), with which his keeper marks the eggs. Any eggs being found with the mark should be easily traceable. It is believed that the fact of this being known to be done is a great deterrent to egg stealing.

counties of Norfolk, Suffolk and Cambridge, and probably in other counties within the British Isles, which have been poached. A large and legitimate trade is done in pheasants' eggs, but so far as partridges are concerned it can scarcely be so, and it is more particularly with reference to the latter that the following remarks apply, as pheasants' eggs and the game farmer have been dealt with in a previous chapter.

It may be honestly stated that, generally speaking, in the counties named, when partridges' eggs are sold they have been in the vast majority of cases illicitly obtained, as what landowner or sportsman, or farmer having the sporting rights on his land, would think of taking partridges' eggs from off his land? Very few indeed, we should say. We have heard of one landowner (and only one) who is said to annually sell some of his first laid partridge eggs, but should rather doubt it, and we will give him the benefit of the doubt.

Being more of a wild bird, the partridge often nests on the banks by the side of the road and by-paths, and early in the egging season before the herbage is much grown the nests are discovered without much searching for by those intent on finding them. No doubt it is some temptation to the unemployed to search the banks, and so long as purchasers can be found among unscrupulous game dealers and others for eggs, however obtained, so long will the illicit traffic exist.

The question of checking this traffic has for years much concerned good sportsmen, and many suggestions have been made in trying to find a remedy, but not until the advent of Game Protection Associations in counties has anything effective been accomplished. Where such Associations exist, and members undertake not to purchase partridge eggs (except under certain special rules), and combine to endeavour to stop the illicit traffic in them, much no doubt can be and is accomplished, and the exchanging of eggs by way of improving stock must be beneficial, particularly where estates are wide apart.

Why these associations should not be formed in more game-preserving counties than at present exist, one is at a loss to understand, as combination and co-operation on the part of an influential society go a long way towards attaining the objects in view.

Much assistance could be given to the preservers of game and sportsmen by honest game dealers, to their mutual advantage, if the latter would only look at matters in a proper light and could be induced to keep a register of all game eggs and live birds of game purchased by them, and allow it to be inspected by some recognised official, acceptable to all; but this is apparently at present too much to expect. The practice of keeping such a register does, we are informed, prevail in some of our colonies; and why not here? So let us hope the day is not far distant when such provisions will be in force in these islands; but game preservers will have to exert themselves before this can be attained —though not much can be expected in this direction while a Radical Parliament lasts.

TENANT KILLING GAME WHEN SAME RESERVED.

Section 12 of the Game Act, 1831, enacts:—

"That where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to or doth or shall belong to the lessor, landlord or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall kill, pursue or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord or other person having the right of killing the game upon such land, such occupier shall on conviction before two Justices of the Peace forfeit and

pay for such pursuit such sum of money not exceeding £2, and for every head of game so killed or taken such sum of money not exceeding £1, as to the convicting justices shall seem meet together with the cost of the conviction."

The above section will not prevent the tenant "as occupier" from killing the hares under the Ground Game Act or the rabbits, even, of course, where the game is reserved, but except as provided by the Ground Game Act a stranger cannot be authorised by the tenant to kill the rabbits either for his own or the stranger's use, or the woodcock, snipe, quails or landrails. When the right to kill is vested in the landlord or the lessee, the license or consent of the tenant is of no avail, section 30 of the Act allowing the party entitled to the game to enforce the penalty.

Consequently as a tenant cannot commit a trespass on his own land, if he kills game, where the game is reserved by the landlord, the offence would come under section 12. If the tenant only kills woodcock, quails, landrails or snipe he could not be prosecuted under section 12. A tenant can take woodcock and snipe with nets or springs.

Where a person is not authorised by the owner of the land or the occupier or the person in possession of the sporting rights, such person is liable to the Excise penalty for killing rabbits, woodcock, snipe, quails and landrails in Great Britain, unless he has a game license under the Game License Act, 1860 (23 & 24 Vict. c. 90, sect. 4).

NIGHT POACHING.

(9 Geo. IV. c. 69, sect. 1.)

If any person be found unlawfully taking or destroying game or rabbits by night on any land, open or enclosed, or by the sides thereof, or any opening, outlet, or gates from such land, highway or path, or by night

unlawfully entering or being on any land, whether open or enclosed, with any gun, net, engine or other instrument for the purpose of taking or destroying game. Punishment for the first offence with or without hard labour, for not exceeding three calendar months, and at the expiration to be bound in a recognisance, himself in £10, and two sureties in £5 each, or one in £10 to not so offend again for the space of one year, and in case of not finding sureties, further imprisonment with hard labour for six calendar months, unless the sureties be sooner found.

For a second offence to be committed with hard labour for not exceeding six calendar months, and at the expiration of the imprisonment to find sureties himself in £20, and two sureties in £10 each, or one in £20, not to so offend again for two years.

The Summary Jurisdiction Act provides a penalty in all cases, where formerly imprisonment alone could be adjudged, but it appears that hard labour cannot be given in default of payment of the penalty inflicted. The maximum fine under this section would be £25.

Prosecutions must be commenced within six calendar months from the commission of the offence and distress is provided in case of non-payment of penalty, and as in all other cases under the Game Laws, except those under the Ground Game Act, there is a right of appeal.

Third offence is an indictable misdemeanour, and has been dealt with previously amongst the indictable cases.

Night time is defined as commencing at the expiration of the first hour after sunset and concluding at the beginning of the last hour before sunrise.

One or two remarks may be made upon the section.

As the reader will observe the offence extends not only to land, open and enclosed, but to any public road, highway or path, or the sides thereof, or at the opening outlets or gates from such land, etc. This was extended by 7 & 8 Vict. c. 29, and was highly necessary.

It will further be seen from the section that the first part of it refers to the unlawful "taking or destroying

of game or rabbits" by night, the latter portion to unlawfully "entering land, open or enclosed, with gun or net, engine or other instrument for the purpose of taking *game*," not rabbits. There is no mention of "dog" in the section, and it has been decided that a dog is not an "instrument" for taking game, but if a dog is used at night there would be no difficulty in charging the defendant with "sporting without certificate," if such was the case, under the 23rd section of the Game Act, *i.e.*, using dog for the purpose of searching for game, to wit, hares. This, as before stated, is a point often overlooked in cases where night offences have taken place.

THE GROUND GAME ACT, 1880.

(43 & 44 Vict. c. 47.)

Under this Act, passed in the interest of good husbandry, for the better security of capital and labour invested in the cultivation of the soil, and to enable occupiers to protect their crops from injury by ground game, the "occupier" of land has the right to take ground game, which is defined as "hares and rabbits," concurrently with the person who may be entitled to the ground game on the same land, subject to the following:—

(1) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing. The "occupier" himself and one other person authorised in writing by such "occupier" shall be the only person entitled under that Act to kill game with firearms. No person shall be authorised by the "occupier" to kill or take ground game, except members of his household, resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game.

Every person so authorised by the occupier shall on demand by any person having a concurrent right to kill and take ground game on the land, or any person autho-

rised by him in writing to make such demand, produce to the person so demanding, the document by which he is authorised, and in default he shall not be deemed to be an authorised person.

(2) A person shall not be deemed an occupier of land for the purpose of the Act by reason of his having a right of common over such lands, or by reason of an occupation for the purpose of grazing or pasture for not more than nine months.

(3) In the case of moorlands and unenclosed lands (not being arable lands) the right is to be exercised only from 11th December to 30th March, but this is not to apply to detached portions less than twenty-five acres in extent adjoining arable lands (see Hares for Ground Game Amendment Act, 1906).

Many points naturally arise in connection with the true interpretation of the word "occupier" as well as of those persons referred to in section 1 of the Act, as capable of being authorised by the occupier to kill and take ground game, namely:—

"Members of his household resident on the land in his occupation";

"Persons in his ordinary service on such land," and

"Persons *bonâ fide* employed by him for reward in the taking and destruction of ground game."

First as to "occupier". The Act states, as before mentioned, who are not "occupiers," and there it stops, without defining the word, but, generally speaking, it may be taken for granted to mean the person actually in possession of the land in question as tenant or sub-tenant as the case may be, but not owners of cattle agisted on land for which so much per head is paid. If the "occupier" was also owner, the Act would not apply to him, the objects of the Act being to assist "occupiers," and it has been so held. "Members of his household." This would be a matter for the court to determine according to the circumstances of the case, as unfortunately the words are not included in the interpretation clause in the Act, and the words would no

doubt seem to apply to those dwelling in the same house as the tenant, though it would hardly include a person casually staying for the day. There does not seem yet to have been any legal decision on the point.

From the above it will be seen that an occupier under the Ground Game Act may authorise one person only to kill ground game with firearms, and that person must be one of those mentioned in the section, and such person must be authorised *in writing*, and the authority must be produced when legally demanded by a person justified in demanding it, or the person exercising the right is not to be deemed an authorised person, and may be proceeded against as a trespasser. If there are more occupiers than one, as in the case of executors, it would appear to be doubtful if all could exercise the right individually. The proper course to adopt would be to arrange amongst themselves who should give the authority.

Many farmers appear to be under the mistaken impression that they can verbally authorise a servant of theirs to shoot ground game, and we well remember an instance when staying in the country with a farmer friend. We had been walking over the farm, he with his gun, when one of his labouring men came and told him he was wanted at home, an unexpected visitor having arrived. Without further ado my friend handed his gun to his man and asked him to go and try and get a rabbit or two or a hare if he saw one, and although we reminded him that he had not vested his man with sufficient legal authority, he could not be reasoned into believing that it was necessary the authority given should be in writing.

If the Act is not complied with legal difficulties are sure to arise, and sometimes very unpleasant ones, particularly when the adjoining properties are strictly preserved by the neighbouring squire, or the sporting rights on them let, with a keeper in attendance. If the provisions of the Act are not adhered to, what is to prevent a farmer with several sons on his farm giving

illegal permission to kill ground game to each of them, one enjoying the benefits one day and another the next, and so on, until one of them happens to be seen by the sporting tenant adjoining or his keeper (which might not occur for months and much damage done in the meantime), when a stop is put to the existing state of affairs, and one son only legally vested with the authority. It is not perhaps so much the wholesale destruction of the ground game by the occupier to the prejudice of the other person entitled to the concurrent right, more particularly the hares, as the damage very often done during the breeding and rearing season to the young birds, which get separated from the parent birds by the constant firing at ground game, and lost.

The Act does not of course authorise ground game to be killed on any days or seasons or by any of the means prohibited by any other Act of Parliament, and under section 2 the "occupier" cannot divest himself of his right to kill the ground game under the Act, and should he attempt to do so, any agreement in contravention of such right would be bad in law, though the Act does not exempt him from taking out a gun license, but it does a game license so far as killing ground game is concerned.

A tenant who has the exclusive right to the winged game under his lease or agreement is within the Act and deemed to be an "occupier" (Sanders *v.* Pitfield). If an "occupier" sublets the land so as to create an occupation in the eyes of the law in the person who hires it from him, he who lets would naturally during the continuance of the tenancy lose his right to the ground game, and his rights under the Act, which would pass to the sub-tenant.

If a bailiff is authorised under the Ground Game Act in writing by the "occupier" (his employer), and he with two other men are found coursing hares, the bailiff having given them verbal permission, the case not coming within the exception in 35 of the Game Act (coursing in fresh pursuit), the two friends would,

it is contended, be committing a trespass under the 30th section, to say nothing about the bailiff being liable for aiding and abetting them.

It is the practice in many parishes in the county of Norfolk and probably throughout the country, for farmers, or their men, when cutting corn with machinery, to invite friends to assist in the killing of the rabbits and hares as they bolt from the remnant of the standing corn, invariably several men being in possession of firearms. No doubt the farmer is only too pleased to be able to reduce the stock of rabbits and hares within his grasp, and to provide against the escape of many. It is not often that any notice is taken of such a proceeding, though in 1906 a case was brought before a Norfolk bench of magistrates, where a conviction followed under the above circumstances, the tenant having overlooked the fact that his authority must be in writing, and that he can only give such authority to one person to kill with firearms, and who must be one of the persons mentioned in the Act. If there were no firearms used, the practice would nevertheless be illegal, unless the parties assisting in the killing were each authorised in writing; though unless there was a destruction of hares, no notice would probably be taken of the matter.

Very considerable doubts have been expressed as to the effect of the meaning of the word "occupier" in connection with an owner who occupies his own land, and some litigation has been the result.

In 1885 in Smith *v.* Hunt it was held that the Act did not apply to owners occupying their own land, consequently that such an occupier was not bound by section 6 as to the illegality of using spring traps above ground, using firearms at night or employing poison, which a *bonâ fide* "occupier" has to comply with.

In the year 1899 the case of Anderson *v.* Vicary was heard and decided at the Exeter Assizes. In this case the owner of the land let the sporting rights to the plaintiff and then sold a portion of the land to the

defendant, subject to the plaintiff's sporting rights. Mr. Justice Wright decided that the defendant who entered into occupation was entitled to trap the rabbits on his portion of the estate, and to be treated as any other occupier, and further went on to say that although it was reported that Smith *v.* Hunt appeared to hold that no part of the Act applied to owners occupying, he thought that the judgment in that case was limited to section 6 of the Act.

On the case being taken to the Court of Appeal, the decision of Mr. Justice Wright was confirmed by a majority of the judges, *viz.*, that the occupying owner had, as incident to the occupation of his land, the right to the ground game, and that a grant of the sporting rights over the land did not deprive him of the right.

In the one case it was decided that the Ground Game Act, so far as the penal section is concerned (using spring traps, setting poison, and shooting at night), did not apply to owners when occupying their own land, who might consequently trap, etc., irrespective of the Act; but in the other it was decided that the Act does to some extent interfere with the power of the owners, when in occupation of their own land, parting with the whole of their interest in the sporting rights to another person.

The Ground Game (Amendment) Act, 1906, amending the Act of 1880, which came into operation on the 1st April, 1907, does not affect the position of matters very much, as it leaves the expressions "occupiers" and "ground game" as before, and does not deal with the other expressions in the former Act.

Section 2 of the new Act extends the right of occupiers of moorlands, etc., referred to in sub-section 3 of the 1880 Act, without prejudice to existing rights under that Act, to killing and taking ground game between the 1st September and the 10th December, both inclusive, in any and every year, as conferred by the former Act, otherwise than by the use of firearms.

Section 3 relates to agreements between occupiers and

owners of moorlands, and is to the effect that section 3 of the Act of 1880 shall not apply to prevent the occupier of lands to which section 1, sub-section 3 of that Act applies, and the owner of such lands, or other persons having the right to kill and take game thereon, from making and enforcing agreements for the joint exercise, or the exercise for their joint benefit, of the right to kill and take ground game between the 1st September and the 10th December, both inclusive, in any or every year.

The Agricultural Holdings Act of 1906 (introduced into the House of Commons as the "Land Tenure Bill") received some drastic amendments in the House of Lords, and deals with the question of compensation to tenants for damages done to their crops by winged game and other matters purely agricultural (which latter we are not here concerned with), and comes into operation on the 1st January, 1909.

The Act as it now stands is not much like the Bill when it left the House of Commons, and sportsmen generally may congratulate themselves upon that fact, as had the Bill passed the Lords in the condition it left the Commons it would have been a most unwelcome addition to the laws from a sportsman's point of view.

Under this Act, if a tenant sustains damage to his crops from game, the right to kill which is not vested in him or any one claiming under him, other than the landlord, he may claim compensation from the landlord for such damage, if it exceeds 1s. per acre of the area over which the damage extends, and any agreement to the contrary is void. Notice of the claim must be given to the landlord as soon as may be after the damage is first observed by the tenant, in order that the landlord may have an opportunity to inspect the damage alleged. When the alleged damage is done to growing crops notice in writing must be given before the crop is reaped, raised, or consumed, and where the damage is done to crops already reaped or raised, notice must be

given before the removal of the crop. If the right to kill and take the game is vested in some person other than the landlord, the latter may claim to be indemnified by such person against all claims for damages under the Act.

Game includes deer, pheasant, partridge, grouse and black game.

It may be somewhat difficult for an occupier to satisfactorily prove that the alleged damage was wholly caused by the depredations of the pheasants, and not partly (as will probably be the case in some instances) by the ground game and from other causes, but this must be a matter for the occupier to decide upon before he embarks on legal proceedings against his landlord.

WILD BIRDS' PROTECTION ACTS, 1880 TO 1904.

Although the above Acts may perhaps be said to be just outside the pale of a small work like the present, we have thought it advisable to give a short epitome of their provisions and also the Orders made under the Acts by the County Councils of Norfolk and Suffolk. Whether the efforts of those responsible for the Orders have given general satisfaction in the counties named is a matter of some doubt. Many curious cases have arisen under the Acts throughout the country, and in all probability more will follow.

Considering the pecuniary value of many species of wild birds which only occasionally visit this country, we would suggest that the penalty imposed by the statute is perfectly inadequate to prevent the killing of these birds. If additional legislation is ever provided, by all means let provision be made for an increase in the penalty, and in the case of a second conviction against the same individual, say within five years, the penalty should be doubled and a forfeiture (and sale) in case of conviction, not only of any trap, net, snare or decoy bird, but particularly the bird and the eggs, which are

the subject of the proceedings, together with any boat or gun used in the killing or taking. This might deter the individuals named from attempting a second time to evade the Act, as it is useless to expect a £1 penalty to influence those who are ever on the look-out for a specimen of a rare wild bird, the possession of which will handsomely compensate them for the fine inflicted. We have heard of one of these "sportsmen" (it was before the Act of 1902 was passed) who, intent on obtaining a rare bird which had been seen on two or three consecutive days, decided to have it at any cost and at all hazards, and this although a reward of £1 per bird for information of unlawfully killing was advertised. He succeeded in shooting the bird, with the aid of a boat, and by way of recouping himself for the penalty which he knew was in store for him, reported the matter to the authorities and, it is said, claimed the reward. He was summoned and fined the full amount named, and accordingly, it is said, received the reward, so that financially he was no worse off. What we then objected to was his being entitled to retain the bird, which was worth a £10 note, also his gun and his boat. The Act of 1902 (2 Edward VII. c. 6, sect. 1) now requires the forfeiture, in addition to the penalty, of the bird or egg obtained, but we think the instruments referred to (trap, net, snare or decoy bird) should, at the discretion of the court, include boat and gun, or at all events on a second conviction.

Section 3 of the 43 & 44 Vict. c. 35 enacts that if any person who between the 1st March and 1st August shall knowingly and wilfully shoot or attempt to shoot or shall use any boat for the purpose of shooting or cause to be shot any wild bird, or shall use any lime, trap, snare, net or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale or shall have in his control or possession after 15th March any wild bird recently killed or taken, shall on conviction be liable to a penalty in the case of any wild bird included in the schedule to forfeit and pay for every such

bird not exceeding £1, and in the case of any other wild bird, for a first offence, reprimanded and discharged on payment of costs, and for every subsequent offence to forfeit and pay for every such wild bird not exceeding 5s. in addition to the costs.

To the above there follows an exception to the effect that the section is not to apply to the owner or occupier of any land, or to any person authorised by the owner or occupier killing or taking any wild bird on such land not included in the schedule.

The following year (1881) an amending Act was passed to the effect that a person should not be liable to a conviction for exposing or offering for sale or having the control or possession of any wild bird recently killed if he satisfied the court:—

1. That the killing of such wild bird, if in a place to which the Act extends, was lawful at the time when and by the person by whom it was killed;

2. That the wild bird was killed in some place to which the Act does not extend, and the fact that the wild bird was imported from some place to which the Act does not extend shall, until the contrary is proved, be evidence that the bird was killed in some place to which the Act does not extend (Wild Birds' Protection Act, 1881, sect. 1).

Additional penalties are imposed by the principal Act upon persons transgressing who refuse to give their real name and place of abode, or give an untrue name or place of abode, in addition to that imposed by section 3 of the principal Act, not exceeding 10s.

The Secretary of State may on the application of any County or Borough Council vary or extend the time during which the killing or taking of wild birds is prohibited by the Act of 1880.

The jurisdiction of the Admiralty is defined, and certain modifications are made as to the island of St. Kilda, etc. The Secretary of State is empowered on application by the local authority to prohibit:—

1. The taking or destroying of wild birds' eggs in any

year or years in any place or places within a county or county borough;

2. The taking or destroying of eggs of any specified wild birds within a county, etc., as recommended by the County Council;

3. The application by the County Council is to specify the limits of the place, the particular species of wild birds to which the order is to apply (section 2 of the Act of 1894).

Section 5 of the last named Act provides as a penalty for taking or destroying or for inciting any person to take or destroy the eggs of any wild bird named in the order, a sum not exceeding £1 for every egg taken or destroyed, and by the Wild Birds' Protection Act of 1902, the eggs and the wild birds taken, etc., may be forfeited on conviction, whilst the Act of 1896 orders any trap, snare, net, or decoy bird to be forfeited on conviction of offence under that or the previous Act.

By the Wild Birds' Protection Act of 1904 any person affixing, placing, setting, or knowingly permitting or causing to be affixed, placed, or set on any pole, tree, cairn of stones or earth, any spring trap, gin, or other similar instrument calculated to cause bodily injury to any wild bird coming in contact therewith, is liable to a penalty of 40s., and for a second or subsequent offence, £5.

As birds included in the schedule to the principal Act of 1880 are very numerous, and as they are not all included in the following Order issued by the County Council of Norfolk, we give a list of them for reference:—

American quail	Cornish chough	Dunlin
Auk	Coulterneb	Eider duck
Avocet	Cuckoo	Fern owl
Bee-eater	Curlew	Fulmar
Bittern	Diver	Gannet
Boxie	Dotterel	Goatsucker
Colin	Dunbird	Godwit

Goldfinch	Oyster catcher	Shoveller
Grebe	Pewit	Skua
Greenshank	Petrel	Smew
Guillemot	Phalarope	Snipe
Gull (except black-backed gull)	Plover	Solangoose
	Ploverspage	Spoonbill
Hoopoe	Pochard	Stint
Kingfisher	Puffin	Stone curlew
Kittiwake	Purre	Stonehatch
Lapwing	Razorbill	Summersnipe
Loon [lark, 44 & 45 Vict. c. 51]	Redshank	Tarrock
	Reeve or ruff	Teal
Mallard	Roller	Tern
Marrot	Sanderling	Thickknee
Merganser	Sandpiper	Tystey
Murre	Scout	Whaup
Night-hawk	Sealark	Whimbrel
Night-jar	Seamew	Widgeon
Nightingale	Sea parrot	Wild duck
Oriole	Sea swallow	Willock
Owl	Shearwater	Woodcock
Ox bird	Shelldrake	Woodpecker

The following is a copy of the Order issued by the Norfolk County Council.

THE WILD BIRDS' PROTECTION ACTS, 1880 TO 1904.

ADMINISTRATIVE COUNTY OF NORFOLK.

Notice is hereby given that under the provisions of the Wild Birds' Protection Acts, 1880 to 1904, His Majesty's Secretary of State for the Home Department has, upon the application of the Norfolk County Council, made the following Order:—

Title.

I. This Order may be cited as the Wild Birds' Protection (County of Norfolk) Order, 1905.

BIRDS.

Additions to Schedule of Act of 1880.

II. The Wild Birds' Protection Act, 1880, shall apply within the County of Norfolk to the following species of wild birds in the same manner as if those species were included in the Schedule to the Act:—

Bearded Titmouse or Reed Pheasant.
Crossbill.
Sand-Martin.

Close Time Extended.

III. The period during which the killing or taking of wild birds is prohibited by the Act of 1880 shall be extended throughout the County of Norfolk, so far as regards all birds mentioned in the Schedule to that Act, except the snipe, teal, and all species of wild duck, so as to be between the 1st day of March and the 1st day of September in any year.

The Bittern, Little Bittern, and Great Bustard Protected during the whole of the Year.

IV. During the period between the 31st day of August in any year and the 2nd day of March following, the killing or taking of the bittern, little bittern, and great bustard, is prohibited throughout the Administrative County of Norfolk. (A recent Order includes the kingfisher, goldfinch, bearded tit, and all species of owl within this clause.)

All Birds Protected on Sundays in Certain Areas.

V. During the period between the 31st day of August in any year and the 2nd day of March following, the killing or taking of wild birds on Sundays is prohibited within the areas described in Article VI., paragraphs (A), (B), (C), (D), and (E) of this Order.

EGGS.

All Eggs Protected in Certain Areas.

VI. The taking or destroying of the eggs of any species of wild birds is prohibited during the period expiring on the last day of February, 1911, within the following areas:—

(A) Hickling Broad, Whitesley and Heigham Sounds, Blackfleet Broad, Horsey Mere, Martham and Somerton Broads, and the rands, skirts and walls thereof, and fens and reed grounds appertaining thereto respectively, and the islands therein, and the dykes communicating therewith, including the Hundred Stream or Thurne River and Ancient Bed and the rands and walls thereof from Heigham Bridge to the sea at Winterton, and all the marshes and low-lying and uncultivated lands, fens, reed grounds, warrens, marram or sandhills and sea-shore, to the line of high-water mark, in the several parishes of Waxham, Horsey, Potter Heigham and Hickling, and such part of the Parish of Catfield as lies to the east of the Midland and Great Northern Joint Railway.

(B) The warrens, marram or sand hills, and sea-shore, to the line of high-water mark, in the Parish of Winterton.

(C) Such parts of the Rivers Yare and Wensum as are within the Administrative County of Norfolk, and the streams communicating therewith; the River Bure and the streams communicating therewith; and Rockland and Surlingham Broads, and the rands, skirts, and walls of each of such rivers and broads, fens and reed grounds appertaining thereto respectively, and the islands therein, and the dykes communicating therewith.

(D) The series of Broads known as Ormesby, Rollesby, Hemsby, Filby, and Burgh Broads, and the rands, skirts, and walls thereof, and the dykes communicating therewith; and the fens, reed grounds, and low-lying lands, marshes, and pastures adjacent thereto, including Lady Broad or Hard Fen Water in the Parish of Filby, Brandyke Broad in the Parish of Burgh St. Margaret, and Muckfleet Dyke, and the marshes and low-lying lands and pastures near or adjacent thereto respectively.

(E) The whole of the foreshore of the County of Norfolk, including the shingle, sand hills, salt marshes, creeks, and other unenclosed lands extending from high-water mark to the first boundary of enclosed or cultivated land separating the foreshore from them.

Certain Eggs Protected throughout the County.

VII. The taking or destroying of the eggs of the following Species of Wild Birds is prohibited throughout the County of Norfolk, *viz.* :—

1. Bittern and Little Bittern.
2. Great Bustard.
3. Crossbill.
4. Great Crested Grebe or Loon.
5. Kingfisher.
6. Sand Martin.
7. Owl (all species).
8. Norfolk Plover, Stone Curlew or Thick Knee.
9. Ruff or Reeve.
10. Ringed Dotterel, Ringed Plover, or Stone Runner.
11. Oyster Catcher or Sea Pie.
12. Terns, Sea Swallows, Pearls, or Dip Ears (all species).
13. Bearded Titmouse or Reed Pheasant.
14. Wild Duck and Teal (all species).

Repeal of Former Order.

VIII. The Order of the 4th April, 1901, is hereby repealed.

Given under my hand at Whitehall, this 6th day of November, 1905.

A. AKERS-DOUGLAS,
One of His Majesty's Principal Secretaries of State.

PENALTIES.

And notice is further given that any person who, during the close time between the 1st day of March and the 1st day of August in any year, kills or takes any wild bird, or who during the close time between the 1st day of March and the 1st day of September in any year, kills or takes any wild bird in respect of which the close time is extended by Article III. of the above Order, and any person who, during the period between the 31st day of August in any year and the 2nd day of March following, kills or takes the bittern and little bittern and great bustard, or who during the

same period kills or takes any wild bird on Sundays within any of the areas described in Article VI. of the Order, will be liable to the penalties prescribed by the above-mentioned Acts.

Any person who shall take or destroy, or incite any other person to take or destroy, the eggs of any wild birds within any area specified in Article VI. of the above Order, or the eggs of any species of wild bird named in Article VII. of such Order, will be liable on conviction to pay for every egg so taken or destroyed a penalty not exceeding £1.

Section 4 of the Wild Birds' Protection Act, 1896, provides that where any person is convicted of an offence against that Act, or the Act of 1880, the court may, in addition to any penalty that may be imposed, order any trap, net, snare or decoy bird used by such person for taking any wild bird to be forfeited.

The Wild Birds' Protection Act, 1902, provides that where any person is convicted of an offence against the Wild Birds' Protection Acts, 1880 to 1904, the court may, in addition to any penalty that may therein be imposed, order any wild bird or wild bird's egg, in respect of which the offence has been committed, to be forfeited and disposed of as the court shall think fit.

CHARLES FOSTER,
Clerk of the Norfolk County Council.

THE SHIREHOUSE, NORWICH, *6th November*, 1905.

EAST SUFFOLK COUNTY COUNCIL.

WILD BIRDS.

Notice is hereby given of the following Order made by the Secretary of State :—

Title.

I. This Order may be cited as The Wild Birds' Protection (Administrative County of East Suffolk) Order, 1902.

BIRDS.

Additions to the Schedule of the Act of 1880.

II. The Wild Birds' Protection Act, 1880, shall apply within the Administrative County of East Suffolk to the

following species of wild birds in the same manner as if those species were included in the Schedule to the Act:—

Avocet	Redstart
Wheatear	Robin
Whinchat	Turtle dove
Great bustard	Bearded tit
Little bustard	Longtailed tit
Crossbill	Osprey
Pied flycatcher	Pied wagtail
Spotted flycatcher	Yellow wagtail
Marsh harrier	Grey wagtail
Hen harrier	Blackcap
Montagu's harrier	Garden warbler
Common buzzard	Willow warbler
Honey buzzard	Chiffchaff
Rough-legged buzzard	Stonechat
Hobby	Whitethroat
Common martin	Lesser whitethroat
Sand martin	Golden-crested wren
Swallow	Wryneck (cuckoo's mate or snake bird)
Swift	
Nuthatch	Kentish plover

Close Time Extended.

III. The time during which the killing or taking of wild birds (other than the wild duck) is prohibited within the Administrative County of East Suffolk, shall be extended so as to be between the last day of February and the 1st day of September in each year, the close time for the wild duck remaining as fixed by The Wild Birds' Protection Act, 1880, namely, between the 1st day of March and the 1st day of August in every year.

Certain Birds Protected during the whole of the Year.

IV. During the period between the 31st day of August in any year and the 1st day of March following the killing or taking of the following kinds of wild birds is prohibited throughout the Administrative County of East Suffolk:—

Avocet
Nightingale
Goldfinch
Nightjar
Green woodpecker
Great spotted woodpecker
Lesser spotted woodpecker
Kingfisher
Cuckoo
Barn owl
Tawny owl
Long-eared owl
Short-eared owl
Buzzard
Honey buzzard
Rough-legged buzzard
Merlin
Hobby
Osprey
Wryneck (cuckoo's mate or snake bird)
Swallow
Sand martin
House martin
Swift
Bearded tit (reedling or reed pheasant)
Longtailed tit
Common (or corn) bunting
Black-headed bunting (reed sparrow)
Cirl bunting
Snow bunting
Yellow bunting (yellow hammer
Robin
Wheatear
Stonechat
Whinchat
Sedge warbler
Reed warbler
Blackcap
Garden warbler
Willow warbler
Chiffchaff
Whitethroat
Lesser whitethroat
Bittern
Redstart
Pied flycatcher
Spotted flycatcher
Nuthatch
Wren
Golden-crested wren
Pied wagtail
Yellow wagtail
Grey wagtail
Spoonbill
Great bustard
Little bustard
Thick-knee

All Birds Protected on Sundays within a Certain Area.

V. During the period between the 31st day of August in any year and the 1st day of March following, the killing or taking of wild birds on Sundays is prohibited in the portion of the Administrative County of East Suffolk which is situated to the east of the London to Great Yarmouth main line of the Great Eastern Railway in the said Administrative

County, and in the following parishes or such parts thereof as are not situated to the east of the said main line in the said Administrative County, namely:—

Akenham, Barking-cum-Darmsden and Needham Market, Barsham, Baylham, Bealings Magna, Bealings Parva, Beccles, Belstead, Belton, Benhall, Bentley, Blakenham Great, Blakenham Little, Blaxhall, Bradwell, Bramfield, Bramford, Brampton, Brantham, Bromeswell, Burgh Castle, Campsey Ash, Claydon, Coddenham, Darsham, Eyke, Farnham, Fritton, Glemham Little, Halesworth, Herringfleet, Holton (near Halesworth), Kelsale-cum-Carlton, Martlesham, Melton, Middleton, Pettistree, Playford, Redisham, Ringsfield, Rushmere St. Andrew (near Ipswich), Saxmundham, Shadingfield, Spexhall, Sproughton, Tattingstone, Tuddenham St. Martin, Ufford, Wenhaston-with-Mells Hamlet, Westerfield, Westhall, Weston, Wherstead, Whitton, Wickham Market, Wissett, Woodbridge, Yoxford, also so much of the following estuaries and tidal waters as are within the body of the County of Suffolk, and lie above or to the landward side of the following lines respectively, namely:—

STOUR AND ORWELL.

A line drawn straight from the Tower, in Walton-on-the-Naze, in the county of Essex, to the seaward extremity of Landguard Point, in the County of Suffolk.

Provided that nothing in the said Order shall apply to any wild duck decoy, for the time being used as such, or any pond used in connection therewith, in the said portion of the said Administrative County or in any of the foregoing parishes.

EGGS.

All Eggs Protected in Certain Areas.

VI. The taking or destroying of the eggs of any species of wild birds is prohibited for a period of five years from the date of this Order in the following places within the Administrative County of East Suffolk, namely, the sea coast, beach, foreshore, sandhills, saltings, or salt marshes, situate between the sea or estuaries and the land side of the sea or

esturial wall, embankment, ditch, fence, or other artificial or natural boundary separating the same from the cultivated land, from the north side of the River Blyth to Landguard Point (excluding the estuary of the Alde above the ferry at Slaughden Quay, Aldeburgh).

Repeal of Former Order.

The Order of the 19th December, 1898, is hereby repealed.

Given under my hand at Whitehall, this 18th day of January, 1902.

(Signed) CHAS. T. RITCHIE,
One of His Majesty's Principal Secretaries of State.

A. TOWNSHEND COBBOLD,
Clerk of the East Suffolk County Council.

COUNTY HALL, IPSWICH,
29th January, 1902.

WEST SUFFOLK COUNTY COUNCIL.

WILD BIRDS' PROTECTION ACTS, 1880 TO 1896.

The County Council of the Administrative County of West Suffolk hereby give notice that by an order of the Secretary of State, entitled "The Wild Birds' Protection (Administrative County of West Suffolk) Order, 1900," dated the 18th day of December, 1900, it is *inter alia* ordered:—

Additions to the Schedule of the Act of 1880.

II. The Wild Birds' Protection Act, 1880, shall apply within the Administrative County of West Suffolk, to the following species of wild birds in the same manner as if those species were included in the schedule to the Act:—

Great bustard	Hen harrier
Reed bunting	Montague's harrier
Gadwell (wild duck)	Common buzzard
Crossbill	Kestrel
Spotted flycatcher	Hobby
Marsh harrier	Hawfinch

Hedge sparrow
Heron
Landrail
Redpoll (linnet)
Common martin
Sand martin
Swallow
Swift
Nuthatch
Ring ouzel
Meadow pipit
Tree pipit
Quail
Redstart
Robin
Redbacked shrike
Tree creeper
Turtle dove
Bearded tit
Longtailed tit
Marsh tit
Coal tit
Grey wagtail
Pied wagtail
White wagtail
Yellow wagtail
Black cap
Garden warbler
Grasshopper warbler
Reed warbler
Sedge warbler
Whitethroat
Lesser whitethroat
Water rail
Golden crested wren
Wryneck (cuckoo's mate or snakebird)

Certain Eggs Protected throughout the Administrative County.

IV. The taking or destroying of the eggs of the following species of wild birds is prohibited throughout the Administrative County of West Suffolk :—

Bittern
Teal
Goldfinch
Great crested grebe
Rednecked grebe
Sclavonian grebe
Eared grebe
Little grebe (dabchick)
Kingfisher
Nightingale
Nightjar (goatsucker, nighthawk, fern owl)
Golden oriole
Barn owl
Tawny owl
Long-eared owl
Short-eared owl
Stone curlew (thicknee or Norfolk plover)
Redshank
Common snipe
Woodcock
Green woodpecker
Great spotted woodpecker
Lesser spotted woodpecker
Great bustard
Reed bunting
Gadwall

Crossbill
Spotted flycatcher
Marsh harrier
Hen harrier
Montague's harrier
Common buzzard
Kestrel
Hobby
Hawfinch
Heron
Landrail
Redpoll
Common martin
Sand martin
Swallow
Swift
Nuthatch
Ring ouzel
Meadow pipit
Tree pipit
Quail
Redstart
Redbacked shrike
Tree creeper
Turtle dove
Bearded tit
Longtailed tit
Marsh tit
Coal tit
Grey wagtail
Pied wagtail
White wagtail
Yellow wagtail
Black cap
Garden warbler
Grasshopper warbler
Reed warbler
Sedge warbler
Whitethroat
Lesser whitethroat
Water rail
Golden crested wren
Wryneck (cuckoo's mate or snake-bird)

PENALTIES.

And notice is hereby given that any person who between the 1st day of March and the 1st day of August, in any year, shall knowingly and wilfully shoot, or attempt to shoot, or shall use any boat for the purpose of shooting, or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument, for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession, after the 15th day of March, any wild bird, recently killed or taken, shall, on conviction, in the case of any wild bird which is included in the schedule to the Wild Birds' Protection Act, 1880, forfeit and pay for every such bird in respect of which an offence has been committed, a sum not exceeding £1, and in addition to such penalty shall be liable to forfeit any trap, net, snare, or decoy bird used by him for taking such wild bird.

And notice is hereby further given that any person who shall take or destroy, or incite any other person to take or destroy, the eggs of any species of wild bird named in Article IV. of the Order above set forth shall, on conviction, forfeit and pay for every egg so taken or destroyed, a sum not exceeding £1.

A. TOWNSHEND COBBOLD,
Clerk of the County Council.

SHIRE HALL, BURY ST. EDMUND'S,
8th February, 1906.

WEST SUFFOLK.

GREAT BUSTARDS, OWLS, KINGFISHERS AND KESTRELS.

Extension of Close Time.

The County Council of the Administrative County of West Suffolk hereby give notice that by an Order of the Secretary of State, entitled "The Wild Birds' Protection (Administrative County of West Suffolk) Order, 1900," dated the 18th December, 1900, it is *inter alia* ordered:—

"During the period from the 1st day of August in any year to the last day of February following, both days inclusive, the killing or taking of the following species of wild birds is prohibited throughout the Administrative County of West Suffolk:—

"Great bustard, owl (all species), kingfisher and kestrel".

And notice is hereby further given that the penalties imposed by the Wild Birds' Protection Acts, 1880 to 1896, apply to offences committed against the Order above set forth.

A. TOWNSHEND COBBOLD,
Clerk of the West Suffolk County Council.

SHIRE HALL, BURY ST. EDMUND'S,
1st July, 1904.

N.B.—The effect of the Wild Birds' Protection Act, 1880, and the above Order is that great bustards, owls, kingfishers and kestrels are protected throughout the year.

CRUELTY TO ANIMALS, BIRDS, ETC.

(Destroying Cats and Dogs, etc.)

The killing of cats and dogs found trespassing on enclosed lands by keepers is not an uncommon occurrence, and as some little misunderstanding seems to exist on the subject, a word or two by way of advice may be found appropriate.

Nineteen keepers out of every twenty labour under the impression, that if a cat or dog is found ranging about on preserved ground they are justified in shooting it. No one is justified in killing a dog or cat when simply trespassing, and not even when trespassing and pursuing game, unless the killing is the only means of protecting the life of the game, etc., pursued, but even in the latter case it is desirable if not absolutely necessary first to attract the attention of the cat or dog, and thus give it a chance to desist and get away before shooting it, and judging from certain decisions in the county courts of late, we must say that very strong evidence must be forthcoming on the question of protecting the life of the game, etc., pursued, or the shooter must be prepared to find himself mulcted in damages for the loss the owner of the dog or cat has sustained.

There does not appear to be anything in the game laws to guide one as to when it is and when it is not safe to kill a cat or dog doing damage or suspected of it, or when after game. By the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97, sect. 41), it is enacted that if any person maliciously kill, maim or wound any dog, bird, beast or other animal, not being cattle but being either the subject of larceny at common law, or ordinarily kept in a state of confinement, or for a domestic purpose, he is liable to a penalty of £20 over and above the amount of injury caused, or may be imprisoned for six months without option of fine, but he has the option of trial by jury. These criminal proceed-

ings could not be taken, nor would they apply to a case of shooting an animal in defence of a person's property, and such a case would resolve itself into a civil action for damages. A person might trap a cat or dog trespassing in his orchard without bringing himself within the provisions of the above Act, but much would depend (if the animal was alive when found) upon the treatment it subsequently received at the hands of the person to be charged, as to whether he were criminally responsible for wounding, etc.

The owner of a legal chase or warren might kill any dog found hunting on the warren, etc., whether it is doing anything hurtful at the time or no (Wright *v.* Ramscot).

The Wild Animals in Captivity Act, 1900, provides that a person shall be guilty of an offence who, whilst an animal is in captivity or close confinement, or is maimed, pinioned or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from such captivity or confinement, shall by wantonly or unreasonably doing or omitting any act, cause or permit to be caused any unnecessary suffering to such animal, or who shall cruelly abuse, infuriate or tease or terrify it, or permit it to be so treated, shall be liable to imprisonment for not exceeding three months, or to a fine not exceeding £5, but the Act is not to apply to any act or omission in the course of preparing animals for food, or to the Vivisection Act of 1876, or to coursing any animal not liberated in injured state in order to facilitate its capture or destruction.

The word "animal" under this Act means any "bird, beast, fish or reptile" which is outside the provisions of the Cruelty to Animals Acts, *i.e.*, horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, dog, cat, or any other domestic animal.

"Domestic animal" has by the Cruelty to Animals Act of 1854 been defined, but it is scarcely necessary to further enlarge upon it here.

Animals *not* the subject of larceny at common law are foxes, bears, monkeys, apes, cats, polecats, ferrets,

badgers, etc., and animals *ferœ naturæ*, not serving for the food of man, although reclaimed, and under the Larceny Act of 1861, when kept in a state of confinement or for any domestic purpose it is larceny to steal or kill with intent to steal any of them, or a part of them. Penalty, not exceeding six months and forfeiture over and above value of animal, not exceeding £20; second offence, imprisonment for not exceeding twelve months (section 21). By section 22 any person knowingly having in his possession any bird, plumage, skin, etc., is liable to the same penalties as for stealing, etc.

Under "The Wild Animals in Captivity Act, 1900," a very important case came before the Holt justices, where two warreners were jointly charged with unlawfully permitting to be caused unnecessary suffering to a certain "wild animal" in captivity, to wit, "a pheasant". The Royal Society for the Prevention of Cruelty to Animals prosecuted, being represented by counsel, and we defended the men. As this was the first case of its nature under the Act where the subject of the inquiry was a bird of game, and as we have not since heard of a similar case being undertaken, we have thought it of sufficient importance to give a somewhat full account of the proceedings, and which we venture to suggest, under the circumstances, and in view of the remarks of the justices who heard the case, are somewhat exceptional.

Counsel for the prosecution said the Society attached a great amount of importance to this prosecution on account of it being practically the first prosecution of any kind under this new Act of Parliament. He thought the bench would be of opinion that it assumed some importance from the fact that he was going to ask them to put an interpretation upon certain words in the second section of the Act. The prosecution had nothing to do with that against a man recently heard, he being only an incident in the case. The facts were very simple. It appeared there saw a prosecution before that bench when that

defendant was summoned for using a trap for the purpose of taking game. Evidence was given in the case, and was supported by the present defendants, who were warreners. They watched this trap, in which was a pheasant, from 2 o'clock till 9 P.M. on the 27th October, and again till 9 o'clock on the 28th. They watched, as they stated, and would undoubtedly state that day, for the purpose of seeing who was responsible for catching the bird.

Learned counsel was here informed he would find that the bird was not alive on the morning of the 28th.

He said he was instructed the bird was alive.

Chairman.—It was proved it was not alive.

Counsel was sure the bench would not be influenced by anything they had heard before. The prosecution was taken under the 63 & 64 Vict. c. 33. In the first section it stated thus: Animals meant any "bird, beast, fish or reptile which was not included in the Acts of 1849 and 1854". The second section said that any person shall be guilty of an offence who, whilst an animal is in captivity or close confinement, or is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from such captivity or confinement, shall, by wantonly or unreasonably doing or omitting any act, cause or permit to be caused any unnecessary suffering to such animal. These defendants were charged with omitting to do a certain act by which substantial suffering was caused to the bird. The Act said that any person who should cause unnecessary suffering to any animal which was subject to any contrivance for the purpose of hindering or preventing its escape was guilty of an offence. In this case the bird was caught in a trap, and his submission was that a trap was a contrivance or appliance which was used for the purpose of preventing the bird's escape. That was a matter of common sense. Then they came to the words "wantonly committing a certain act". It was quite clear the defendants had been watching the bird in the trap,

and they did so for the purpose of ascertaining who set the trap, so that whatever they did or omitted to do was done intentionally and therefore wantonly. The question was whether this omission of the defendants was reasonable. That, of course, raised the question as to whether anything could have been done by defendants that would have obviated the sufferings of the bird. There were two things which he submitted could have been done by the defendants to have obviated that suffering. They could have watched for those whom they intended to catch, leaving the trap empty. If that was not sufficient, they could have killed the bird and left it in the trap, so there were two things they might have done which they did not do, and having omitted to do these two things which they might have done, his submission was there was an unreasonable omission to release the bird.

Chairman.—There is another point. If they had killed the bird in the trap they might have rendered themselves liable to be prosecuted under another Act.

Counsel said he recognised the weakness of the argument about killing the bird, but he did not believe if the men were brought before the bench on a charge of killing a bird under such circumstances they would be punished.

The Chairman said he only wished to draw attention to it. He did not wish to harass learned counsel at all.

Counsel said he thought the point would be raised. The question was whether they could not have done something else. It was not an offence to release a bird from a trap.

Chairman.—With a broken leg?

Counsel said he would deal with that point further on. They could have released this animal from the trap. It would have caused it less suffering to be released than to have continued fluttering about in the trap; even if the wing and legs were broken, it would have suffered less on the ground than in the trap. With regard to the word "omit," it said in the section, any one omitting to do any act under these circumstances by which unnecessary suffering was

caused would be committing an offence. The question arose as to whether there was any legal responsibility on these men to do anything or not. He contended that the defendants were the only persons who could have released the bird, and therefore being persons in that responsible position they undoubtedly were persons who had some legal responsibility thrust upon them. Consequently they omitted to do what was obviously their duty. Then the question arose as to whether by that act of omission any suffering was caused at all. The only argument he could apply was that it was obvious that if the bird had been removed from the trap it would have suffered less.

An Inspector of the R.S.P.C.A. said he was sent by the Society to the district in order to make inquiries generally as to the trapping of wild game. He came down on the 26th November.

Chairman.—After the conviction.

Witness.—Yes, in consequence. There had been reports of gamekeepers doing that sort of thing, and he was sent down. He said he made some inquiries as to the prosecution, and in consequence, on the 28th November, saw one of the present defendants. Witness told him he was making inquiries about a pheasant which was caught in a spring trap on the 27th October on land belonging to Mr. C—— H——, and asked him if it was a fact that the bird was allowed to stay struggling in the trap from 2 o'clock on Sunday the 27th until the next morning. Defendant replied: "I saw a pheasant there in the trap about 2 P.M. and sent for T—— (the other defendant), and together we watched the bird from 2 o'clock on the Sunday afternoon till 9 P.M., and then we went home, returning at four next morning. The pheasant was still alive, but it was what you call dead, when it was taken out at nine by the then defendant." Witness told him it was alleged that the bird was badly mutilated, and must have suffered very much before it died, and asked him why he did not kill it. He replied: "It was my duty to have done it, as it

was private ground, but I left it as we have a lot of poachers on the land". Later on witness saw the other defendant, who said: "About 2 o'clock on Sunday——"

The Chairman asked if the witness had any right to go and interrogate a person. If a policeman had done this, he would have been censured and cautioned. He questioned whether the evidence was admissible.

Counsel said a very important case had been decided on that point, the late Lord Chief Justice stating that he was of opinion that a caution should not be given.

Witness, continuing, said T—— told him that they had watched the pheasant till 9 P.M. He returned again at 4 o'clock in the morning and found the pheasant still alive and knocked about, the legs being broken and other injuries. Witness asked him if it would not have been more humane to have killed the pheasant at 2 o'clock, and he replied: "That is nothing to do with me. I could not help its sufferings." He added that he wanted to catch the man.

Cross-examined.—There was no one present when he examined the defendants. He was certain that V—— (one of the defendants) told him the bird was alive at 4 o'clock in the morning. Defendant did not state that the plantation belonged to the brother of his employer. He did not know the Society was going to prosecute, as he was simply sent down to make inquiries.

Another witness (the defendant in the previous case and also a warrener) stated that on the 28th October he found a live pheasant in a trap at a quarter-past nine in the morning. Witness took it from the trap, killed it, and put it in his bag. He was at once spoken to by the two present defendants. One of them said, "Is this how you catch them?" Witness replied, "It looks like it". One of the present defendants then said they had watched the bird since 2 o'clock the previous day, and observed that it was alive at a quarter-past four that morning. Both of the legs were broken, and one wing smashed all to pieces.

Cross-examined, witness admitted having been prosecuted for using the trap and convicted.

This was the case for the prosecution.

For the defence we submitted that the defendants did not come within the provisions of the new Act. One was a warrener in the employ of a person not in possession of the sporting rights, and he went on the Sunday in question into a wood which belonged to his employer, but over which his employer's brother had the shooting rights. He saw a bird in a trap, and sent for the other defendant. He knew some one had been poaching, and thought it was his duty to watch and see who the culprit was. They watched until nine that night, and the next morning when they went again to the spot they found the bird was dead. Under the circumstances they thought they had done everything they could legally be expected to do. If they had killed the bird, they would have been killing game without a license. They did not know for one moment if the man who had been convicted of using the trap might not have been on the other side of the fence. The defendants knew nothing about the provisions of the new Act, and it was suggested that it should have been published the same as the Wild Birds' Protection Act had been, and submitted the following evidence for the defence.

Mr. C. H., the owner of the wood, was sworn, and stated that V—— was a mole-catcher in his employ, and had not a game license. "Common Hill" (where the trap was stated to have been set) was his property, but the shooting was let to his brother. V—— had no right to interfere with any game in that wood, or with a spring trap set there. If he had let the bird out of the trap it would not have been possible to have convicted the man of setting the trap.

Counsel.—Therefore a bird must go on suffering in order that a man may be convicted. If it could have been proved to the satisfaction of the Society that this man set the trap——

Chairman.—He was convicted before us.

Counsel.—If the Society had had evidence that the former defendant saw this bird in the trap and allowed it to suffer, he would have been prosecuted, but the only evidence we have is that he did not know it was there.

Chairman.—That bird could never have got into that trap if the former defendant had not set it.

Counsel.—For that he has been convicted.

The Chairman asked whether it was the duty of any one who set traps for rats to watch and see if a rat came in, and then kill it.

Counsel.—No, it is not your duty to sit by that trap and watch it, but if it could be proved that you omitted to do any act by which unnecessary suffering is caused, then you are guilty of an offence.

Cross-examined.—Witness said he approved of the conduct of his employees. They had no right to kill the bird, and if they had let it out of the trap the man who set the trap could not have been convicted because no one saw him do so. Undoubtedly the bird would not have suffered so much out of the trap as in it.

The Chairman thought it would have suffered a great deal more if let out, as it would have fluttered about and been starved. It ought to have been killed if anything.

We were about to call the defendants when counsel intervened, and said he opened his case as to the responsibility of the defendants, and that they had jurisdiction over certain land, and that they alone could have released the bird from the trap and had omitted to do so. If the bench were convinced they had no such power and no such responsibility, his case was gone. He could not possibly ask the bench after that to convict the defendants in the way he had asked them to.

The bench retired to consult in private, and on their return into court the Chairman said they had given the case great consideration, and they had come to the conclusion that it must be dismissed on the ground that the defendants had no jurisdiction over the trap or pheasant, and allowed the defendants their costs.

SEIZURE OF GAME FOUND ON POACHERS, TRESPASSERS, ETC.

By section 36 of the Game Act any person found by day or night upon any land, or in any of His Majesty's forests, parks, chases or warrens in search or pursuit of game, and who shall then and there have in his possession any game which shall appear to have been recently killed, it shall be lawful for any person having the right of killing the game upon such land by virtue of any reservation or otherwise, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any officer as aforesaid of such forest, etc., or any person acting by the order and in aid of any of the several persons, to demand from the person so found such game in his possession, and in case such person shall not immediately deliver up such game, to seize and take the same from him for the use of the person entitled to the game upon such land, forest, etc.

There is nothing in the section as to a *search*, and if the game cannot be seen by the person demanding it, he should not proceed to search the trespasser, although he may strongly suspect and his suspicions would prove correct. (It is, however, often done.) The demand should be made then and there on the land or in fresh pursuit. The game seized must be strictly confined to the birds and beasts included in the definition of "game" in the Act.

This section includes the sporting tenant, and he and his keeper, etc., would be justified in seizing game from a trespasser.

It would be noted before that the seizure under the Poaching Prevention Act only applies to police constables on highways, where suspected persons coming from land are searched and game, etc., found upon

them, when not only the "game" found upon such persons, which includes rabbits, game eggs, etc., but any gun, net or engine used for the killing or taking game is liable to seizure. There is no power for a gamekeeper to seize a gun found upon a trespasser.

Special powers are, however, given to gamekeepers appointed by the lord of a manor, slightly in excess of those powers possessed by ordinary gamekeepers, but they must be set out in the "deputation" appointing the keeper, which is to be stamped and registered with the clerk of peace. These refer chiefly to the seizing of dogs, nets and other instruments or engines used for the taking of game. If warranted by his deputation to do so, he could kill any dog used by an unlicensed person on the manor lands (Roy *v.* Duke of Beaufort). A keeper on a manor could not be authorised to seize "guns" by his appointment, as the word is omitted from the section under which the "deputation" is made. One gamekeeper of a manor could not seize and destroy the dog of a gamekeeper on an adjoining manor which he found trespassing on the first-named manor (Rogers *v.* Carter).

ARREST.

Questions sometimes arise as to how far a keeper may go in the arrest of a poacher found committing offences under the game laws. Mistakes are sometimes made, keepers having got excited and gone a little too far in arresting a person found committing an offence on the land over which he is in charge, with the result that his employer is threatened with an action for damages.

Section 2 of the Night Poaching Act of 1828 provides :—

That where any person shall be found upon any land committing any such offence as is mentioned in section 1 (night poaching), it shall be lawful for the owner or occupier of such land or for any person having a right

or reputed right of free warren or free chase thereon, or for the lord of the manor or reputed manor wherein such land may be situate, and also for any gamekeeper or servant of any of the persons therein mentioned or any person assisting such gamekeeper or servant, to seize and apprehend such offender upon such land, or in case of pursuit being made in any other case to which he may have escaped therefrom, and to deliver him as soon as may be into the custody of a police officer in order to his being conveyed before two justices of the peace, and in case such offender shall assault or offer any violence with any gun, crossbow, firearm, bludgeon, stick, club or other offensive weapon towards any person so authorised to seize and apprehend him, he shall whether first, second or other offence be guilty of a misdemeanour, and on conviction liable to penal servitude for seven years or imprisonment with hard labour for not exceeding two years.

It will be seen from the above that the power to arrest given by this Act does not extend to the lessee of the sporting rights or his gamekeeper or servant, but only to those named.

The Night Poaching Act of 1844 extends the Act of 1828 to persons taking or destroying game or rabbits by night on public roads, highways or paths, or by the sides thereof, or the openings, outlets or gates from same, and persons offending under this Act may be arrested by the owner or occupier of the lands adjoining such road, etc., their gamekeepers and servants and any one assisting them.[1] Persons may also be arrested when found at night on land open or enclosed with gun, net, etc., for the taking of *game* (but not for the taking of rabbits) under the latter part of section 1 of the Night Poaching Act, 1828.

Also under section 9 of the last-named Act, offenders may be arrested where three or more together enter land opened or enclosed armed by night with gun, etc.,

[1] The poachers here must be actually taking game or rabbits.

for the purpose of taking or destroying game or rabbits. (If one armed, all are armed, and if one only enter and the others are outside assisting in any way, all are equally liable.) So that a keeper must not arrest a poacher on the highway going to or returning from where he has been in search or pursuit of game or rabbits, nor can he when they are poaching on the highway by night arrest poachers there, unless the poachers are, as above stated, actually taking game or rabbits at the time, but it would be otherwise had the keeper pursued them from off his master's land where they had been taking game or rabbits.

If a gamekeeper whilst attempting lawfully to arrest a poacher meets with violence, and in self-defence strikes the poacher and the poacher kills him it is murder (Reg. *v.* Ball). Reasonable resistance is justifiable in the case of a sporting tenant or a servant of his in arresting a poacher under section 2 of the Night Poaching Act (Reg. *v.* Addis), and where the servant of a sportsman discharged his gun whilst struggling to arrest a poacher, whereby the poacher was killed, it was held to be manslaughter (Reg. *v.* Wesley). Apart from the above, if a felony has been committed an accused person may be arrested without warrant. If a misdemeanour a warrant should be first obtained.

Any person may however arrest a poacher when committing an *indictable offence* between 9 A.M. and 6 P.M. and hand him over to a police constable (14 & 15 Vict. c. 19, sect. 11), which has been held to apply to poachers under the Night Poaching Act of 1828.

Any person also may arrest under the Larceny Act of 1861, section 103, a person found committing any indictable offence without warrant, which will apply to the indictable offence of killing or taking hares in warrens by night.

For the offence of trespassing in the daytime persons cannot be arrested, but their names and addresses may be demanded and they may be requested to leave the land and give their correct names and addresses, and if

the offenders refuse or give a false one or refuse to leave the land or return to it, they may be arrested and conveyed before a justice, and, on conviction, they are liable to a fine of £5. If, however, the offenders cannot be conveyed within twelve hours before a justice they must be discharged and summoned in the ordinary course. The above penalty would be in addition to any penalty the offender is liable to for the trespass in pursuit of game, etc.

The person entitled to make the request for the name, etc., would be :—

Any person entitled to kill the game;

The occupier of the land;

Any gamekeeper or servant of either of them or a person duly authorised by them.

It must not of course be assumed from the foregoing that every person *trespassing on land* may on declining to give his name and address be taken before a justice and there dealt with, but only persons on the land in pursuit of game, snipe, woodcock, quails, landrails or conies. If a mere ordinary trespass, where no damage accompanies it, the remedy would be by action at common law or an injunction to restrain; but in that case the occupier or owner would be justified in using sufficient force to expel an intruder, if he declined to leave the premises when requested, though no more force than was absolutely necessary should be resorted to.

The Game Act of 1831 does not preclude actions for trespass on land in search of game, dead or alive, or for other purposes, section 46 providing as follows: "That nothing in this Act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of a trespass upon his land, whether committed in pursuit of game or otherwise, save and except that where any proceedings shall have been instituted under the provisions of this Act against any person for or in respect of any trespass, no act at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent

such proceedings shall have been instituted, but that such proceedings shall in each case be a bar to any such action, and may be given in evidence under the general issue ".

It does not appear necessary for a defendant to have been actually convicted before a bench of justices of a trespass in pursuit of game to bar a subsequent action for trespass for damages, an order dismissing the case would be sufficient where the case had been heard and formally adjudicated upon.

From the above it will be seen that it is optional for the person against whom the trespass has been committed to take either criminal or civil proceedings against the person trespassing.

An action for trespass could be brought in the High Court or in the County Court where the damages claimed do not amount to more than £100, but the County Court could not try an action where a question of title arises, except by consent of the parties interested; where the value of the lands, tenements, or hereditaments in dispute or the rent payable in respect thereof exceeds the sum of £100 by the year. Should the plaintiff bring an action in the High Court, which might have been brought in the County Court, and does not recover £10 or more, he is not entitled to any costs, and if £10 or more and less than £20, only the County Court scale costs, unless the judge certifies that there was sufficient reason for bringing the action in the High Court.

AIDERS AND ABETTERS.

The general law as to aiders and abetters applies equally to offences under the game laws, so that every person who aids, abets, counsels or procures the commission of any offence under such laws punishable on summary conviction, is liable to be proceeded against and convicted for the same, either together with the principal offender or before or after his conviction, and is liable to the same fine or imprisonment as such principal offender is liable to, and may be proceeded against in the county, borough or place where the principal

offender may be convicted or where the offence of aiding or abetting may have been committed. If the aider and abetter is so charged, prior to a conviction having been secured against the principal, proof of the principal offence having been committed would be required.

Special provision, it will be remembered, has been made in the Poaching Prevention Act as to accessories to persons coming from land where they have been in pursuit of game and having game nets, etc., in possession.

Where a person stands on a roadway or bank of a field in which another is committing, say, a trespass in pursuit of game, and assists or gives an alarm to him in the field, the first mentioned might be rightly charged with aiding and abetting, or even as a principal, as he could be satisfactorily proved to be acting in concert. If two men are driving in a cart and the cart is stopped and one man shoots and kills game which he secures and takes back to him in the cart, who has been detaining the horse, holding reins, etc., the last named would be aiding and abetting. These are of course only simple illustrations of the offence of aiding and abetting, the law applying to all offences committed.

JUSTICES' JUSTICE.

It is not intended by the above title to infer that justice is not impartially dispensed by those holding His Majesty's Commission of the Peace in game cases coming before them at the various petty sessions. Entirely the reverse.

After many years' experience we can honestly say that magistrates, if sportsmen and the owners of their own shooting, as a general rule are more inclined to err on the side of leniency and to give the defendant the benefit of the doubt than those justices who are not so interested in that particular kind of sport. We have seen some rather hard hits at justices in print, as to the heavy penalties inflicted upon defendants under the game laws, but we cannot endorse them, as our experience

has been otherwise; indeed in some courts it is next to impossible to obtain a conviction against a trespasser in pursuit, if he appears and strongly protests his innocence, whether he goes into the box to give evidence or not. Egging cases now are happily a thing of the past, with the exception of an odd case or two each year, but when this was so rife it was very seldom that more than a shilling fine per egg was inflicted, although 5s. per egg might have been imposed. We have often thought if magistrates could see their way to inflict a somewhat heavy penalty on a poacher when caught for the first time, it might have the effect of effectually stopping him from that line of business. To inflict a small fine, often paid with contempt, generally results in another expedition to spite the prosecutor's servant —plus an endeavour to recoup the penalty paid. If the second venture is successful, in all probability the man blossoms into a full-blown poacher before he is much older.

Merciful to a fault very often, particularly towards a first offender, the magistrates no doubt do exercise their jurisdiction more seasonably in the case of an old offender.

Many interesting cases under the game laws in which we have been concerned are well worth reproducing. Space will not admit of many, but whilst on the subject of justices, we should like to refer to an instance of how game cases are sometimes dealt with in the North country.

A defendant was summoned before a bench of magistrates for a trespass in search of game, to wit, hares. It was proved he owned a dog, which was taken out with him regularly, and had become a great nuisance to the gamekeeper. The dog was seen to be chasing a hare in a field adjoining the highway, but the sending of it there by the defendant, who remained a passive spectator walking along the crown of the road, could not be proved, in fact there was no evidence except that the dog was in the field coursing the hare. The

justices retired to consider their decision, and, on their retaking their seats, the chairman, after enlarging on the gravity of the offence, explained to the defendant that it had not been satisfactorily proved to the court that *he* had actually trespassed or been seen to incite the dog, but there was abundance of evidence to show the dog had been trespassing in pursuit, and they had thereupon unanimously decided to convict, further remarking that "although they could not fine him, as he deserved, they could the dog, and would". The dog would be fined 10s. and costs.

We are not quite sure whether the conviction was appealed against, or whether the owner paid the dog's fine. We do not remember the dog going to jail.

OUSTER OF THE JURISDICTION OF THE JUSTICES.

A claim is very often set up by a defendant charged with some offence under the game laws (more particularly perhaps in a case of trespass in pursuit), that he had a right vested in him to do the act complained of, and for which he has been summoned. If this claim is, in the opinion of the justices hearing the case, a *bonâ fide* claim of right, their jurisdiction is ousted and their hands tied from dealing with the matter before them, just as in a case of wilful damage where a right is set up.

It is not, however, sufficient for a defendant to state that he claims a right (as that might be done in any case), but it must be a reasonable claim and one which the law will support him in, not a mere idle, absurd or shadowy claim which the law cannot recognise. The claim is often set up by a defendant's solicitor, sometimes with the faintest pretence towards a right, especially if he has only a moderate defence on the merits of the case, but it is for the justices themselves to decide as to the reasonableness or otherwise of the right alleged. There is one point that perhaps ought to be here men-

tioned, and that is the question of "guilty knowledge". Under almost all other Acts of Parliament there must be what is legally termed "mens rea," that is to say, that the defendant at the time he committed the act complained of knew he was a wrongdoer, and was committing a criminal offence. Under the game laws, however, so far as a trespass in pursuit of game or rabbits, etc., is concerned, this is dispensed with, and a defendant is presumed to know the law and what his own rights are. A number of cases have been decided in the High Court on the question of claim of right and ouster of jurisdiction which we need not trouble the reader with here, but a very important case was decided which arose on certain common lands at Holt called "The Lowes," in which we were interested, and in which all the authorities on the subject were discussed, and we have thought worth reproducing.

The case was heard before the justices sitting at the Holt Petty Sessional Court, when a man was charged by a keeper with unlawfully committing a trespass in pursuit of pheasants on the Holt Lowes. It was admitted the defendant was upon "The Lowes," and shot a pheasant there; that the information was laid by a person having no interest in the land or in the game thereon; that "The Lowes" had been at one time waste or common land, but had been dealt with by an Inclosure Award under an Inclosure Act, 47 Geo. III., and which award was put in in evidence.

The defendant claimed that he was entitled under the provisions of the award to kill the game on "The Lowes," as he was the occupier of an ancient house in the parish of Holt of a less rental value than £10 per annum.

The clauses in the award are very long, and we do not propose to set them out in detail, but the following are portions of clauses which were relied on:—

"And we do hereby assign, set out and allot unto the rector, churchwarden and overseers, etc., all that piece of land in Holt called 'The Lowes,' about 120 acres.

In trust and to the intent that the same shall and may be used by the owners and occupiers of such ancient houses within the said parish of Holt as are particularly specified in the schedule hereunder for the purpose of supplying each and every of them with common of pasture for one head of neat stock, or for one gelding or mare, and that the owners and occupiers of such houses shall and may for ever hereafter cut and take flags, ling, brakes and furze for firing upon such part of the last-mentioned allotment, to be consumed in such houses respectively, and not elsewhere, at such times in every year in such proportions and in such manner and subject to such rules, orders and regulations as the said rector, etc., for the time being or the major part of them shall from time to time direct or appoint.

"And we do hereby order and direct that no cattle whatever shall feed or depasture or be turned upon the last allotment for the purpose of feeding and depasturing there, save and except such cattle as shall really and *bonâ fide* belong to and be the property of the several persons who shall answer the description aforesaid, and shall for the time being be entitled to the benefit of the said last allotment according to the true intent and meaning of the said private Act." Then follow directions to the trustees for the management, the appointment of reeves, the repairing of the fences, the impounding of cattle wrongfully turned on the allotment, etc., etc.

It was admitted that the house occupied by the defendant was one of the houses scheduled in the award.

That he acted in good faith, and stated that the only claim he made to the right of shooting was as an occupier of the house scheduled.

A witness was called on behalf of the defendant, who also owned a scheduled house, who swore he had shot on "The Lowes" with different people, and had never had his right to do so disputed by anybody.

On behalf of the prosecution it was contended that under the statute 1 & 2 Wm. IV. c. 32, sect. 30, it was immaterial who laid the information; and even if that were not so originally, it is so since the Summary Jurisdiction Act came into operation.

That the defendant might be convicted under the statute, although there is no evidence of "mens rea".

That in order to oust the jurisdiction of the justices, the *bonâ fide* claim of right set up must not be absurd, shadowy or impossible in point of law. That the right set up by the defendant under the award was wholly without foundation in law. That such rights as the award gave to the defendant did not and could not confer any right to take the game on the land in question.

The justices, however, under the circumstances were of opinion that the defendant's claim of right was made *bonâ fide*, and that their jurisdiction was thereby ousted, and declined to adjudicate, but agreed to state a case for the opinion of the court above.

On the case being formally prepared, the points for the consideration of the court were:—

1. Was the information rendered invalid by the fact that the appellant had no interest in the land in question or in the game thereon?

2. Were the justices right in holding that their jurisdiction was ousted by the claim of the defendant?

The matter came on in due course in the King's Bench Division of the High Court before J. J. Ridley and Bigham, when the first point for the consideration of the court was withdrawn by counsel for respondent, who admitted that the information was valid, but with respect to the second question the court decided that the appeal of the appellant must be dismissed, the court being of opinion that the claim of the defendant was a *bonâ fide* one.

In giving judgment, Justice Ridley said: "The defendant may well have the right he claims, and I think it would be unjust for me to say otherwise. I do not

think this court is the right court to deprive the defendant of the claim he makes, as I do not think it is a claim that cannot be properly set up. The whole question is whether he had a reasonable ground. I do not pretend to say it is a case free from difficulties, but I think the question is whether or not the magistrates were right in considering their jurisdiction was ousted.

"The case governing this is Watkins *v.* Major, and although that case is distinguishable, the principle laid down in that case can be applied here. There it was laid down that there must be shown reasonable grounds in order to oust the jurisdiction. This applies here, but the facts somewhat differ, because in this case there has been an enclosure, and the ancient houses cannot be left out of our consideration altogether. Further, another person who owns another house also claims the right which has not been disputed. Can it be said there is no possible belief that the defendant had any reasonable grounds to believe he had the right? The difficulty arising is, I do not see anything in the award which could entitle the defendant to the right of sport. It is one of those cases on the border-line, and I have come to the conclusion that we should apply the principle that the justices had the right to hold their hands, and that there was a question of title which ousted their jurisdiction. What we say does not decide the rights of the respective parties, and we do not say what the rights show."

Justice Bigham, in following, said: "I have had a great deal of doubt in the case, and my difficulty arises from the fact that I cannot easily describe how the respondent's right arises out of the facts stated in the special case. I agree with counsel for the appellant there should be some colour of title to such a claim as set up, but here there is not only a *bonâ fide* claim set up, but it appears that some other person had enjoyed the right undisputed by any one. I cannot say the justices were wrong in the course they took. The rights of the respondent should be raised in some

other way. I agree with the decision of my brother Ridley."

ANOMALIES IN THE GAME LAWS.

One often hears it stated when Acts of Parliament are being criticised, "that there was never an Act yet passed but what a coach and four might be driven through it," and so on. This is a somewhat wide expression, but no doubt to the lay mind many suggestions might sometimes be made by way of improving the draft of a bill to be presented to Parliament, but it is very often forgotten that there are two sides to most questions, and although a certain suggested alteration might appear very expedient and apparently an advantage so far as one set of persons interested are concerned, yet where many people's interests are at stake it often needs more than ordinary skill and efforts to effect a just change equitable to all.

No doubt there are a few alterations necessary in the game laws, when looked at from a game owner and sportsman's point of view, and this is the light in which we are looking at them at present (and a great many more no doubt in the eyes of the poacher), but it is proposed only to deal with a very few which occur in practice, and which would be an advantage to the game owner and sportsman if remedied, although it must not be forgotten that undoubtedly the legislators of the past were perfectly cognisant of what they were doing, in fact doing what has been done with their eyes open and intentionally.

A reference to the latter part of the Night Poaching Act of 1828 will show that to unlawfully enter by night any land open or enclosed with a gun, net, engine or other instrument for the purpose of taking or destroying game, renders the offender liable to a heavy fine. Inasmuch, however, as the word "dog" is not mentioned in the section, and as it has been decided that a dog is not an instrument for taking or killing game, a person

trespassing at night in pursuit of game commits no offence under that Act, as the trespass in pursuit section only applies to the daytime. This Night Poaching Act, it is suggested, requires amending so as to include "dog" as an "instrument," as undoubtedly some dogs, particularly lurchers, are often very instrumental in taking game, to say nothing about other damages and depredations they commit when out at night with their owners, particularly during the nesting season, the worrying of sheep, etc. It is far from pleasant to contemplate having men with dogs ranging about on your meadows or park by night after game, and because no game or rabbits are taken and appropriated no criminal proceedings can be taken under the Night Poaching Acts.

A case in point was brought to our notice some little time back where keepers found men trespassing during night poaching hours on strictly preserved land, with lurcher dogs undoubtedly after hares. Fortunately for the men no hares were killed or even seen by the keepers, nor had even a rabbit been killed, but the matter was reported to their employer by the keepers, who received instructions to proceed against the men, their names having been taken in the ordinary way. Application was in due course made to the magistrate's clerk of the division for a summons, but he pointed out to them that no offence had been committed.

The employer was greatly disappointed, and much annoyed at such a state of affairs existing, and not being satisfied in his own mind, decided upon obtaining legal advice, but only to be advised that the magistrate's clerk was quite correct in his version of the law. Had the dogs been seen to have been urged on, or incited by their owners in the searching of game, or had the men appropriated a rabbit which the dogs had caught, the case would have been much different.

An alteration might also very properly be made in the law so far as larceny of dead game is concerned. As the reader will probably know, to constitute larceny in dead game the game must have been reduced into

the possession of the owner, and the question of identification has also to be reckoned with.

A year or so ago a landowner in Norfolk had upon his estate a rabbit warren and employed several warreners, some of whom were suspected of purloining rabbits caught by them for sale by their employer. The head keeper was instructed to give an eye to and search any of the warreners he suspected. He met two warreners one day returning home at the end of the day, and he told them he suspected them of stealing rabbits and should search them. The men in reply denied they had any rabbits in their possession or that they had ever stolen any, but on the keeper searching them and raising their respective "smocks," upon each man he found a brace of freshly killed rabbits tucked up under their smocks. The rabbits could not have been obtained from other than the land on which the men were employed, and were warm. The keeper was instructed to lay an information for larceny against each for stealing a brace of rabbits, as the case could not be otherwise treated, seeing there could not be a trespass in pursuit of rabbits by the men when there, they being lawfully there and specially employed to kill rabbits.

Summonses were issued, but on the case being called at the ensuing petty sessions, it was suggested by the bench that the information should be withdrawn, and this was done, the magistrate's clerk no doubt having intimated to them that no conviction could follow, and nothing further was done in the matter.

The rabbits had never been reduced into the possession of the owner, and the identification of the rabbits would have been difficult to prove, as generally speaking rabbits are somewhat awkward animals to swear to, unless they have been previously "nicked" or marked in some way or other. Nor could the warreners have been charged with embezzling the rabbits, as it could not have been proved they had been received by the men for and on account of their master, etc., as required by that statute to support a conviction.

If a beater appropriate a shot bird he has picked up which has never been received into the possession of the sportsman who killed it, or perhaps more likely mortally wounded it, it is not larceny at common law. Unless the bird could be unmistakably proved to be alive when picked up, there could not be a charge of trespass in pursuit of game or of taking game without certificate, *a fortiori*, if the bird was actually dead, it could not be a trespass, the section only applying to live game, and as it had not been reduced into possession it could not be larceny.

A year or so ago a landowner was out shooting with a party of friends on his own lands. A pheasant, which was either killed or mortally wounded, dropped on the bank dividing the field on which the bird was shot and the highway, and before it could be found and picked up by the shooting party or their attendants, a travelling hawker who happened to be passing along the highway (and who had probably seen all that had transpired), picked up the bird and declined to give it up when asked to, quietly walking off with it, saying he claimed it as his property. His name was taken and application was made for a summons against him either for larceny of the bird or for game trespass in respect of it (the prosecutor did not care which), but no process was granted, the bird never having been reduced into possession, and it not being quite clear or able to be sworn to that the bird was alive when appropriated by the hawker.

From the above and innumerable other cases which might be mentioned, it naturally follows that some effort should be made to get the laws amended making provision for the purloining of game, etc., which cannot from the circumstances arising be then and there reduced into the possession of the owner. Admitted that such birds as pheasants and partridges and indeed other birds of game in a natural state are when alive practically wild game, and not a personal chattel in which a person on whose land they are can have an absolute

property, but merely a qualified right under certain circumstances to capture and take them, still it is exceedingly annoying to find a pheasant that has been reared on your property and fed and attended to until the law allows it to be killed, when it is shot, purloined by the first loafer who happens to pass. An action for trover would no doubt lie for the possession of the bird so taken away, but who would go to the expense of such proceedings in a civil court? The remedy would be worse than the disease.

There are cases of larceny of dead game by those who have not poached and killed the game reported, but in Reg. *v.* Townley, where rabbits had been caught by poachers and left in a ditch and afterwards brought away by them, the rabbits being *ferœ naturæ*, it was held not to be larceny. Had the rabbits been taken away by persons other than those who had caught them, they would have been considered as the property of the owner of the land on which they were found, and larceny could be committed in respect of them, but it does not seem to be intended to place poachers in the same category as felons.

It may be taken for granted that the mere killing of an animal or bird of game by a person legally authorised to kill game is not such a reduction of it into possession as would make it his absolute property so as to maintain a charge of larceny against the person who took it away with the intention of depriving the owner of it (Reg. *v.* Roe). But animals and birds *ferœ naturæ* when reclaimed and confined and practically under the care and cognisance of their owner would be the subject of larceny at common law, *e.g.*, young pheasants in a coop reared by a hen, although they eventually become wild birds when turned out; pigeons when reclaimed and swans when marked and at large in public rivers, or whether marked or not if in a private river or pond, etc.

Going back to the question of anomalies in the Acts, the first section of the Night Poaching Act of 1828 dealing with guns, nets, etc., as before stated, not only

omits the word "dog," but also the forfeiture clause, which at times has been found very important. The Poaching Prevention Act provides on conviction as before stated for an order by the justices being made for the sale or destruction of game nets, guns, etc., found by a police constable on a defendant on highway where he had been in search of game and was suspected of having used them, the proceeds going to swell the county exchequer. It is suggested the Night Poaching Act should also carry a forfeiture clause in respect of the nets, etc., used.

Surely if poachers are out by night taking game or rabbits, with probably several nets 100 yards long each, and a lurcher dog driving the rabbits into the nets, on a conviction the nets should be forfeited. Poachers, as a rule, know the land on which they poach well, one or more of the party every foot of it as a rule, and very often the habits and arrangements of the keepers in charge, and in a few nightly visits with anything like ordinary luck, can soon clear a place of the rabbits. Sometimes, however, the poachers come off second best, and have to leave their nets and tackle behind, being only too glad to keep clear of the keepers.

As a rule, the guns, nets or other instruments are generally retained by the prosecution who leave the poacher to his remedy (not often availed of), but it would be more satisfactory if the detention was done under the cover of the law. An action in the county court for the recovery of the nets or their value by the poacher after his conviction might be successful, but would hardly be worth the expense and risk with the possibility of the Whitehaven case being repeated and an order made for the handing over of the nets, valued at 1d. in a few years' time.

Further, there appears only one section in the game laws dealing with crime, *viz.*, section 1 of "The Night Poaching Act of 1828," which provides for an increased penalty being imposed for a second conviction against the same offender.

Under the licensing laws, and indeed in many other statutes, provision is made for this, and a person who is even found drunk in a public place is on conviction a second time within twelve months liable to a double penalty, and for a third offence within the like period to a penalty of 40s. with the costs. Why should not the same principle be applicable to offences under the game laws? It would surely act as a deterrent if an habitual poacher knew he would be liable to a double penalty when caught trespassing in pursuit of game a second time, and so on.

As it is, the penalty for this offence is not a particularly heavy one; and seeing that an individual partial to this particular class of offence is not caught every time he commits it, it is evidently thought well worth while running the risk for the sport, plus income, involved. Were the penalty liable to be doubled on a subsequent conviction within five years, with a corresponding period in default of payment, a person's weakness in this direction might be cured and his poaching proclivities effectually nipped in the bud before he blossomed into a confirmed poacher and hardened criminal. Prevention is better than cure.

A very large accumulation of long nets, the result of sundry confiscations from time to time at a local court, were deposited for public sale, in accordance with the previous orders of the justices in the various cases in which the nets had been conspicuous factors. Having had a casual intimation of the proposed sale, and not caring to attend personally and bid for the nets (which might have meant giving a very long price for each), and being particularly anxious the nets should not again fall into the hands of the "gentlemen" responsible for the accumulation, or their friends, we made an arrangement with a local furniture broker to buy the whole of the lot in for us.

He attended the sale, as also did about a dozen interested poachers, each no doubt having made up his mind after inspecting them as to which he intended to secure.

The bidding commenced, and the nets being sold in one lot as arranged, was secured by our representative, the poachers present not caring to bid, being under the impression they could obtain from the broker what nets they felt inclined to buy, with a small addition to the purchase price by way of commission to him, and were all in good spirits at the position matters were assuming. When the nets were knocked down to the broker for a very trifling sum the poachers were not long in making their choice and in asking: "How much do you want for this? How much for this? What for this?" and so on. On being told by the broker he could not sell any of the nets, that they had been purchased on a gentleman's instructions who required them, the contempt and disgust of the poachers may be imagined. They tried hard to effect "a deal" and to buy one or two old favourites, but the broker was immovable and would not sell one, and at last the poachers, finding further efforts useless, left the hall making use of the sweet modest language ordinarily used by that fraternity.

Of course a poacher cannot expect to come off scot-free every time he goes out. It may be he thinks the game would not be worth the candle if there was not a little more excitement in poaching than the mere obtaining and selling the game poached. No doubt often a good many jokes are cracked whilst he is making his long rabbit nets in the back premises, and a sore grievance it must be to him when he has got his nets out on two sides of a favourite calling place and is about to send his trusty dog into the field to drive the rabbits home into the nets when he hears the keepers lumbering on to him. He has then to decide whether he will face the music or take to his heels, and it is generally the latter, though no doubt it is like taking his heart's blood to leave his nets behind.

GUN LICENSES.

As it is not every one who knows the full legal extent of the Gun License Act of 1870 (33 & 34 Vict. c. 57), it may not be out of place to give shortly an epitome of its provisions here, not so much as affecting sportsmen generally, but as showing what the law exacts from other persons often met with on the lands with firearms in their possession.

The above Act requires every person who uses or carries a gun in the United Kingdom, except in a dwelling-house or the curtilage thereof, to take out a yearly license, which costs 10s. (unless such person shall have in force a game license) under a penalty of £10, and by section 2 of the Act "gun" includes a firearm of every description, and an air-gun, or any other kind of gun from which any shot, bullet or other missile can be discharged. Even a mere pocket toy pistol has been held to be a gun (Campbell *v.* Hadley).

"Curtilage" means outbuildings, offices, yard, etc., adjoining a house, which would pass in a conveyance of the house. An orchard or yard separated from the house by an enclosed yard, beyond which was a garden, was held not to be within the curtilage of the house (Asquith *v.* Griffin).

Police constables, as well as the officers of Inland Revenue, have, under section 9 of the Act, power to demand production of a license from any person using or carrying a gun (unless such person is in the Naval, Military or Volunteer Service of His Majesty, or in the constabulary and others exempted), and if the person upon whom the demand is made does not produce the license or a license to kill game and permit the constable or Excise officer to read the license, such constable, etc., may require the Christian and surname of such person, and if he refuses to give same he is liable to a penalty of £10, in addition to any other penalty he may have subjected himself to under this or any other Act. The £10 may, however, like all other penalties since the

passing of the Summary Jurisdiction Act, be reduced by the justices hearing the case to any extent, and is not as was the law prior to the passing of the last-named Act merely reducible to one-fourth. For a second offence the penalty can only be reduced to one-fourth of the maximum. The constable or officer may enter when necessary any land or premises (other than dwelling-houses or curtilage) for the purpose of making such demand for a license. There are of course numerous classes of persons who are exempted from the provisions of the Act who incur no penalty, *viz.* :—

1. Any person in the Naval, Military or Volunteer Service of His Majesty or constabulary or police force using or carrying gun in performance of duty or engaged in target practice.

2. Any person having in force a license or certificate to kill game granted by the Excise.

3. Any person carrying a gun belonging to a person having in force a license under the Act by order of such licensed person or for the use of such person.

4. The occupier of lands using or carrying a gun for the purpose of "scaring" birds or killing vermin on such lands or a person so using or carrying by order of the occupier who has himself a license to use a gun or to kill game.

5. Any gunsmith or his servant carrying a gun in the ordinary course of his trade or by way of testing it.

6. Any person carrying a gun in the ordinary way of his business as a common carrier.

By section 8, if a gun is carried in parts by two or more persons *in company*, each and every of such persons is deemed to be carrying a gun. But, query, would an offence be committed under this section of the Act if two or more persons were carrying certain portions of a gun amongst them but were *not in company*. We suggest not. The words carrying or using require no comment. "Scaring" birds does not mean *killing* birds, consequently if a person who has a license to kill game, or to carry and use a gun, authorises another to kill

birds, the last named must have a license to carry a gun.

The Act does not define what "vermin" means, but in a Scotch case (Lord Advocate of Scotland *v.* Young) it was held that rabbits were not vermin, and a license should be obtained by any one about to shoot them, indeed it would appear from the wording of the Game License Act of 1860 (23 Vict. c. 90) that every person who shall take, kill or pursue or assist in so doing or use any dog, gun, net or other engine for the purpose of taking, killing or pursuing game or any woodcock, snipe, quail, landrail, coney or deer without a proper license (with the exception of taking woodcock or snipe with nets or springs and various other exceptions) is liable to a penalty of £20.

The learned editor of Stone's *Justice's Manual*, thirty-eighth edition, in a footnote to the Gun Act, states that it is understood that the Board of Inland Revenue will not as a rule take proceedings against any person who being duly authorised by the holder of a gun or game license may occasionally kill a bird that does not fall within the description of game, while engaged in "scaring" birds for the protection of his crops.

By section 7 the onus of proof that the person charged is not incurring the penalty lies on the defendant.

Licenses are not transferable, and if a person be found carrying or using a gun without a license, the fact of his taking out a license later on in the same day would not relieve him from the liability to prosecution.

The license to carry a gun is void if the licensee is convicted of trespassing on land in pursuit of game or woodcock, snipe, quail, landrail or conies under section 30 of the Game Act. A game license would be also forfeited were the person convicted under the last-named section in possession of one, but there is nothing to prevent a person so convicted from taking out a fresh license for the remainder of the year on paying the necessary duty to the Excise.

An occupier of land would not we think require a

gun license to shoot a fox on his lands as it would seem to come within the definition or rather meaning of the word "vermin" in the Act.

Under the Highway Act of 1835, sect. 72, to fire off any gun or pistol within fifty feet of the centre of any carriage-way or cart-way incurs a penalty of not exceeding 40s.

GAMEKEEPERS AND POACHERS.

As a rule it will be admitted that gamekeepers are about as trusted members of the community, so far as their masters are concerned, as most men who have to work for their living, very often the most implicit confidence being reposed in them, and it is not very often that we hear of one abusing his trust. Like other members of the community, however, there is occasionally found a black sheep amongst them.

Having had a very large number of cases under the game laws through our hands during past years, where the informations have invariably been laid by keepers, and having had ample opportunities of judging of their probity and merit, in justice to them we feel bound to say that so far as one could judge, with one single exception, we never doubted the truth of the statements made to us, relative to any case they had in hand. With the above exception they have proved themselves a straightforward class of men. It is not an occupation that appeals to many people, and at times the duties of their office must even be a little distasteful to themselves, especially when their beat is made the happy hunting ground now and again of a gang of notorious poachers on their nocturnal visits, or even when one or two families of poachers live in the immediate neighbourhood.

Patrolling alone, very often under such circumstances, the lanes and pathways through the fields, protecting the game, must at times be very trying to them, and there is perhaps some excuse for a keeper who, after

several severe days' shootings, indulges in a little more bed than is usually his lot. Apart from his qualifications as nominal prosecutor, however, some keepers have been known to be a little remiss in their duties to their employer when duty called them to protect his property, and we have heard some good stories in this direction, but one or two will no doubt suffice.

Not long ago a keeper was called up by two police constables to assist them in an endeavour to arrest some poachers who had been seen to enter a wood near the keeper's house with guns and who were then at work amongst the pheasants. The officers did their best to waken the keeper by hammering at his front door, but this not having the desired effect they commenced throwing stones at his bedroom window. This answered the purpose, the keeper putting his head out of the window and wanting to know what was the matter. He was soon told, and asked if he had not heard the guns almost under his window. He said he hadn't heard them, but that it was not to be wondered at as he had been out all day shooting and had got deafened with the continuous reports of the various guns, and was awfully tired. Whilst the officers were urging him to put on his clothes and accompany them, the poachers made off with their booty, and were not caught.

We have known of instances where keepers have absolutely refused to dress and leave their bedrooms to assist police constables who had gone considerably out of their way and off their beat to advise the keepers of night-poachers who were making a haul amongst pheasants, and remember the case of a head keeper "feeling very much aggrieved at a constable" for knocking him up at midnight after a shooting party, positively declining to accompany him, and asking the officer to go to the under-keeper's house and knock him up, as he himself "had had a very rough time of it lately".

The police officer patrolling the roads has often an opportunity of watching a night-poacher which a keeper

has not, as he often meets the poachers on the roads going to the rendezvous, and as he is practically powerless on the land, assistance is often very naturally suggested, and expected, from the keepers, and if a rebuff instead of assistance is given the policeman, he is not likely to take notice of a second poaching expedition coming under his observation in that immediate neighbourhood.

Where three or more enter by night armed with guns, etc., for the purpose of taking game, the legislature has wisely, as before mentioned, made the offence an indictable one, and properly so, as it is not every preserver of game who considers it necessary or desirable to employ more than one keeper, though his shooting may be somewhat extensive, but with few coverts; and where poachers have arranged for a night's excursion on some one's preserves they generally go armed, which means rough business, and an intention to have a few bags of game at all hazards. The law should be, as indeed it is, severe upon poachers who go out poaching at night in gangs. There is considerable credit due to the keeper who, when alone, is bold enough to tackle a band of desperate men who stop at very little when they find there is a prospect of their plans being frustrated.

In striking contrast with the few weak-kneed keepers we have heard of, there are of course scores of the most fearless keepers who are out night after night attending strictly to duty, but we do not propose to deal with them here.

Of the poacher we may say he is a wily customer at his best, and is generally well known, more particularly to the police. Of course there are poachers and poachers, the one a professional and confirmed poacher making his living by it (when not in jail), and the other satisfying himself with a turn now and again; some who will own up honourably when caught red-handed, others who do not hesitate at throwing a brick at a keeper's or constable's head to facilitate escape. As the old ones

die off, as age and infirmity creep on, there are generally others to take their places, and if a poacher has a son it is next to certain he follows in the footsteps of his father; so that there is not much likelihood of their extinction. We have heard of some rather daring escapades in which poachers have been engaged illustrative of the length they will sometimes go and the risks run, sometimes the result of a bet.

Last season a poacher made a bet of 2s. 6d. with a man about the same calibre as himself, that he would go to a certain wood and shoot half a dozen pheasants which he would bring home, and whilst at the wood would unchain the keeper's watchdog. This is not many miles outside the city of Norwich, and the truth of it is vouched for by our informant, who stated the pheasants were brought into the city and the bet paid. Our "hero" selected his night and took a friend with him, a more notorious poacher than himself. The pair went close up to the keeper's cottage in the wood, and commenced shooting the birds. The second shot roused up the keeper, who came outside the back-door and shouted, "Who's there?" On being told not to make a noise, but go inside, as he might get shot, he did so, and was not seen any more that night. The remaining pheasants required were soon bagged, and the dog (which, it should be stated, was known to the poacher) liberated from its chain.

In a certain small town in Norfolk the police occasionally had to take in hand a poacher who invariably had the happy knack of throwing himself into a fit at a moment's notice when arrested. A young officer once arrested him, and getting nervous at the police station at the condition of his prisoner, deemed it prudent to call in the services of a medical man. On the doctor arriving and examining his "patient," he soon found the man was malingering, and requested the officer to fetch a hand basin while he got his lance out, intimating that it was necessary to bleed the patient. The "invalid" heard it, and unable to stand it any longer jumped up

and commenced a violent attack on the doctor, with a view to making good his escape; but after sundry blows from the doctor in self-defence with a new umbrella (which unfortunately came to grief in the encounter), the man was secured and safely lodged in the cell. It is not on record whether the doctor's fee and the damage to the umbrella were paid for by the county, but the result was evidently somewhat different to what the poacher had expected.

Early one morning two poachers, father and son, had for them a very fortunate experience. They had been out on their bikes about six miles from home, and as they were returning with the game strapped on their machines one gave way, and had to be repaired. Whilst this was being done in a suitable place by the side of the road, the squire's carriage drove past, the squire having just been driven to the station, and the coachman returning to the Hall noticed what the men were doing and the game beside them. Had the squire been in the carriage matters might have turned out differently. Fortunately for the poachers the coachman did not take the trouble when he got to the Hall to send word to the police constable resident in the village until an hour or two had elapsed, or the pair would soon have been overtaken and, under the Poaching Prevention Act, searched and the game seized. As it happened the men were able to mend their bicycle, load and ride off, leisurely reaching home without mishap. The only person they met was the keeper on a neighbouring estate, who of course had no power to interfere, and to whom they jocularly remarked, as they pointed to their newly-acquired game, " This is what we have to do for a living now ".

A subsequent examination near where the men were seen first, disclosed unmistakable evidence where the stakes and nets had been used, but of course there was no evidence to connect the two men with them, as they had not been seen on the land, and no offence could be proved against them.

An old poacher whom we knew very well, old Bob N., and who never, it was said, went out during the daytime, always at night, and then alone, used to say he didn't care a rap if he was only "catched" fair, but when the keepers met him on the highway with his gun and game at night, overpowered him and took from him what he had got, and then swore he was found poaching on the land, it was a bit above a joke. He was nearly always in jail, as getting into years he couldn't get away when it was necessary quite so quickly as he would have liked. He was quite a torment to the magistrate's clerk, as when out of prison he generally found time to call upon Mr. T. for the purpose of begging a shilling or two when "hard up," and which he seemed to think he was fairly entitled to, seeing he was Mr. T.'s best client, and he was not often disappointed. He had a great respect for Mr. T., and often was heard to say, "Mr. T. is a nice man, but d—n them costs". This old poacher died in jail.

An amusing instance of the audacity of poachers happened near Norwich last season.

Several of them had been out one night netting rabbits, and had caught about thirty couples; but as it was not practicable for them to get the rabbits into the city before daylight, their cart having failed them, they decided to hide the rabbits and the nets altogether in a partially used straw stack on the field. Not considering it prudent to go themselves later on in the morning for the rabbits and nets, they sent the wife of one of them to see if all was right at the stack. Some labouring men having been working in the same field in the meantime accidentally came across the rabbits and the nets, and, having apportioned the rabbits amongst themselves, very foolishly placed the whole together again (with the exception of one man's share, which he wisely preferred to have in his own possession) under the hedge in the field. Upon the wife returning and informing the poachers that all the rabbits and nets were missing, the men were in a

great state of excitement, as it meant considerable expense and labour if the nets were not recovered. A consultation was held as to what should be done, and eventually it was decided that they should all go and make inquiries from the labourers, and that if they could only get back the nets by fair or foul means, they would be satisfied, and would not trouble about the rabbits. On getting to the field they did their best to make friends with the labourers, regaling each with a good drink of "something short, out of a long bottle," and told them of their loss, that they did not care so much about the rabbits, as they could soon get some more, but they wanted badly to get the nets back, and perhaps the labourers could tell them something that might assist them. They soon got on the soft side of the labourers, who, delighted with their lucky find, very soon proudly admitted that they had found the rabbits in the stack with the nets, and as they did not want anything with the nets, which were of no use to them, they (the poachers) could have them back again, provided they themselves retained the rabbits, which was of course agreed to. All went to where the rabbits and the nets were, when the poachers coolly commenced to pick up and walk off with the lot, nets and rabbits, telling the labourers to stand back; they were theirs, and they were going to have them as they had caught them, and much to the discomfiture of the labourers walked off with both rabbits and nets.

Last season three notorious poachers were busily engaged in a wood strictly preserved in which were a large number of pheasants. It was the time of the year when hen pheasants were in demand, and the men were adopting the usual tactics resorted to by poachers in this part of the country when live hen birds are most valuable, *viz.*, gently suspending a large number of small nets from the bushes on each side the pheasants' runs and slowly driving the birds into the nets, in which they become entangled. They had secured a goodly number of birds when more than an equal number of

keepers appeared on the scene and secured poachers, nets and pheasants. A cart was speedily requisitioned, and the delinquents placed therein with their game and nets, a sufficient posse of keepers accompanying them to prevent any attempt at escape. Whilst being driven to Norwich one of the poachers made bold to offer a suggestion to the keeper in charge, *viz.*, that instead of being ignominiously taken to the city they should all give their proper names and addresses, and that they should be summoned instead of being "carted" about. None of the poachers appear to have been known to the keepers, but after a little hesitation the keepers were prevailed upon to act upon the suggestion, and the names and addresses of the poachers were carefully taken, and the men liberated with a view to being summoned. The head keeper afterwards makes his way into the city to lay the information, and on his way communicates with the police, who, on scrutinising the names and addresses, were strongly of opinion all were fictitious ones, as indeed they turned out to be. Although several visits were made to the city by the keepers with a view of meeting and identifying one or more of the men wanted, no success was met with and nothing further transpired. Moral—One in the hand is worth two in the bush.

Those who abet the poacher are without doubt more to blame than the poacher himself.

We know an apparently respectable man, living on his own estate of something like 100 acres, surrounded by large landed proprietors who strictly preserve. His place is not easily watched, as there is practically but one entrance to it by road, and that approach is well lined with barbed wire netting on each side of the roadway, at the end of which, before a visitor can reach the front or back doors, there is a ferocious dog, on a long chain, to pass, and none but those authorised by his master must venture near. Nor does he forget to bark when any strangers are about. No game is reared on this particular estate, the proprietor satisfying himself

with the game reared by his neighbours around, which he ingeniously entices. He has a game license, and is said to thoroughly enjoy himself, being a good shot. But what we cannot appreciate in him is his open encouragement to and harbouring of the most notorious of poachers, as many as half a dozen at a time having been hospitably entertained by him on his premises, specially catered for in one of his barns, where he finds sleeping accommodation for his guests on the hay-mow. Of course the game found on his lands is soon secured, and nightly excursions made on the preserves surrounding him. On the approach of danger from the keepers in the vicinity (ever on the look-out for the marauders), a hasty retreat is made back to their haven of safety. The proprietor, of course, takes the game purloined, which is despatched to the London markets, and who gets the lion's share of the ultimate proceeds of the plunder can be easily imagined. To do him credit, however, we must admit there is still truth in the old saying, "Honour among thieves," for he is not slow at paying the fines of his friends when occasion arises, for the smaller offences they are caught at when napping, nor does he mind becoming surety for them when that even is necessary, and no one else is forthcoming to take the responsibility.

Another gentleman we know well, materially assists poachers to his and their mutual pecuniary advantage. He has very extensive shooting rights over scattered lands in several parishes in a game district, but we are not sure whether he rears any pheasants. What we refer to is his giving leave to the various poachers in the vicinity to trap and snare the ground game *ad lib.*, with the result that when these poachers are accosted by any of the police in the district with a sack of rabbits on their back, and searched under the Poaching Prevention Act, they always happen "to be coming from the gentleman's land in question, where they have honestly got their game". In the face of these statements, when the land alluded to is practically within

the range of possibility of access, nothing further can be done, and the game, undoubtedly poached off other lands, must be allowed to pass, much to the officer's chagrin.

Whilst on the subject of smuggling home game unlawfully obtained may be mentioned a novel way we have recently had brought to our notice.

In a parish not many miles from the city of Norwich, is a mansion in an extensive park, where the game is very strictly preserved.

Unfortunately for the sportsman the parish is infested with poachers, who practically live out of the proceeds of the sport they are fortunate enough to enjoy, and apparently seem to have learned by experience how to poach and evade the vigilance of the police and the gamekeepers. We have not, of course, made it our business to follow them in their enjoyment, only dealing here with the proceeds of their excursions, easily arranged and secured in a very simple manner.

The proprietor at the Hall is kind-hearted, and good enough to give to several of the old women in the parish the privilege of going into the park and gathering sticks and firewood, blown off the trees around and adjoining their cottages. The poachers, well knowing this arrangement, always plant their sack of pheasants, hares or partridges at a convenient place in the wood for being brought home, and arrange with their female relatives to do the needful, either on their barrows or perambulators, well covered up with sticks, at a convenient time next morning when the police constable has either just come off duty, or just gone on, and is nicely out of harm's way.

This has been in vogue for some years without the slightest suspicion being attached to any one, and must have been the means of saving many a poacher from running directly into the arms of a police constable who would have been only too glad to have met him coming home with his poached game.

The most audacious and barefaced robberies in con-

nection with game and game eggs we have heard of were the following.

In a large portable fowl's house in a field (placed some 100 yards from the gate leading into the highway), specially fitted up for the purpose, were a large number of pheasants' eggs, about 1,000, under farmyard hens, and expected to hatch off in about a week's time. To the dismay of the keeper, one morning, on going to feed the hens, he found the staple through which the lock was attached, drawn, to admit of entrance to the house, and every egg from under the hens taken. The only other intimation of anything unusual having happened outside the fowl-house were the marks of cart wheels on the grass close by.

Every endeavour to discover the miscreants (for there must have been more than one person engaged), was made, but the matter remained a mystery. A notorious poacher got credit for the theft, though the residents of the parish looked nearer home for enlightenment, but the keeper was not suspected, and rightly so. Whoever the perpetrators were they must have known something of the keeper's arrangements and that he was not likely to disturb them for twenty minutes or so. As the eggs must have been known to have been in an advanced state, special arrangements must have been made by the thieves with the intended buyer for the resetting on delivery, as who would have bought under such circumstances?

The other case alluded to was where a game owner had the misfortune to lose at one fell swoop the whole of his stock of young pheasants, several hundreds about half grown, from the coops while with their foster-mothers. In this case not a vestige of a sign by way of a clue was left behind by the thieves. No arrest was ever made. A poacher was suspected of knowing something about the birds, and some time afterwards, on getting a substantial sentence for night-poaching in the neighbourhood, is said to have admitted the theft and to whom he disposed of the birds, sold to one of his

accomplices in a much better position than himself, who, he alleged, had turned the birds down amongst his own.

Probably the admission was correct, but the poachers bare statement would have been useless without some substantial evidence corroborating him, had proceedings been attempted. Assuming he adhered for a while to his statement, in all probability he would shortly afterwards have repudiated it and sided with his friend, and sworn his previous statement had been a hoax.

One of the methods adopted by poachers for the netting of partridges, and without doubt the most disastrous to the sportsman, is as follows:—

Three men leave by night for their rendezvous by different routes till they get out of the city (anywhere up to seven or eight miles is good enough for them), in possession of a long net up to 100 yards long by four or six wide, with two poles which will take to pieces, on the fishing-rod principle. On arriving at their destination the poles are put together and affixed to each are the ends of the nets. A man then takes possession of each pole, the net is stretched out, and with the net extended the two men walk down the field, the third man keeping a short distance behind the net. As soon as a covey of partridges is touched up they fly, and down goes the net on them. All may not be caught, but the major part of them generally are; besides the net is often placed over the top of a covey before a single bird has taken flight, and No. 3 behind despatches the birds against the sole of his boot and bags them. This operation is repeated till the bag has enough in, and a return is made home. When will the sportsman learn to protect his game by bushing. Even a few slender branches of dead hawthorns stuck up in the ground considerably retard the progress of the poachers, as they are awkward things to get out of a net in the dark, and it is an easy and cheap remedy which few farmers object to.

We have known of instances of large coveys of part-

ridges being taken wholesale, and when a shooting party has afterwards arrived with every expectation of making splendid bags, there was scarcely a partridge to be found, and this even in a gentleman's park.

Poachers invariably secure sporting rights where they can.

We know a notorious poacher, who, we are informed, actually has vested in him the sporting rights over considerably more than 1,000 acres of land in the parish in which he resides and adjoining parishes, some of the land running close up to plantations most strictly preserved by the landowner whose keepers have to incessantly watch the nests on the border until the eggs are hatched off. He, the poacher, takes out an annual certificate and consequently is able to legally sell his game without any difficulty to persons licensed to deal in game. Of course he does not go to the expense of rearing any birds, but no doubt takes care to secure all the eggs he can off the lands he has any right on, and in the shooting season bags all game he can kill.

What arrangements he makes with the various tenants of the properties by way of rent we do not know, nor whether he is assessed on the sporting rights to the rates, but we are surprised at the neighbouring owners allowing such a state of affairs to exist, instead of paying a trifle for the sporting rights, and squeezing out their undesirable neighbour.

The constables in and about the parishes are powerless, and have only a poor time of it, as there is nothing for them to do but to look on when the game and eggs come home. Under the circumstances there is not the slightest use in making investigations.

Whilst speaking of poachers something may be said of the four-legged poacher. We are reminded of the damages a fox occasioned one night to a game farmer's stock of pheasants in Norfolk. Having gone to make an inspection of the farm, whilst looking round the buildings we were surprised to see a quantity of hen pheasants hanging up. It was the close season and

we were informed by the proprietor that a fox was responsible for his loss. It appears that amongst his stock of pheasants on the farm were about 3,000 hen birds in an enclosure which was surrounded with wire netting about 12 or 14 feet high, supported by and fixed to poles placed in the ground at intervals of so many yards. This enclosure was erected on a meadow and horses were grazing outside the enclosure. During the night the animals had evidently been rubbing their hind quarters against the poles, and in walking away had lifted up the bottom of the netting sufficiently high to admit of a fox creeping underneath and killing between fifteen to twenty brace of pheasants. Long hairs from a horse's tail were found attached to the netting and pole, which thoroughly explained the cause of the mishap and consequent slaughter. Some of the birds had evidently only had a nip on the head while others were more disfigured. How the cunning rascal had been able to find his way out of the enclosure again was a mystery, as the netting had not, if we remember rightly, been much lifted up from the ground and the enclosure was a very large one. No doubt the birds having one wing strapped were considerably handicapped and would fall easy victims.

A keeper has no right to take a ferret from a poacher found trespassing, and the latter would be justified in retaking same, but using no more force than necessary and actually required for the purpose.

To kill game a gamekeeper must be in possession of a license taken out either by him or his master under section 7 of the Game License Act of 1860. He can, however, shoot hares under the Hares Act of 1848, without license, if duly appointed and authorised by his employer. Authority must be registered with the clerk to the justices of the division, which is held good till the 1st February unless revoked.

COMMON LANDS—WARRENS.

Over the waste lands of a manor the lord of the manor has by right of his ownership of the soil the right to the game thereon, and the persons having rights of common of pasture on the wastes simply have a right to eat the herbage by their cattle, sheep, etc. (Cooper *v.* Marshall). They (the common right holders) have no right to the game on the common, and the lord could maintain an action of trespass against them for so doing (Lonsdale *v.* Rigg). Neither are they considered "occupiers" under the Ground Game Act of 1880. If, however, the commons have been enclosed under some Enclosure Act and portions thereof allotted to persons as freeholds, the right to the same would no doubt belong to the allottees, but in this case a question affecting the rights of individuals interested in the property and the game there, is not very likely to arise.

Several attempts have of late been made in Norfolk by the inhabitants of villages in parishes to claim the right to the rabbits on the common or waste lands as against the lord of the manor and those claiming under him, but they have been uniformly unsuccessful in their attempts, and section 10 of the Act of 1831, which protects the lord's rights to the game, seems now to be getting more generally admitted and recognised.

Where the Enclosure Award for the parish absolutely vested the rabbits and the right to hunt and take them on the Common in the parishioners, and the right has never been assigned, it would still exist, but this is not general, and we only remember of one instance where this is so, and this only extending to householders under a certain rental.

Warrens generally speaking are nothing more than enclosed lands (or they might be unenclosed), used for the breeding of rabbits or hares. Any person may have a warren on the land he hires or owns. On poor land this is often resorted to, and the income derived therefrom when attended with ordinary care and attention is

very often considerable. Of course if the animals, either rabbits or hares, escape, being *ferœ naturæ*, on to an adjoining owner or occupier's land, they may be there shot and appropriated by him, so that it is highly desirable to effectually enclose.

"Free warren" is a special right derived by grant from the Crown, and possesses rights and liberties thereunder.

As will be seen in other portions of this work the killing or taking of hares or rabbits in warrens is a much more serious offence than killing or taking them elsewhere. If the offence be committed at night-time (during night-poaching hours) it is a misdemeanour, if in the day-time the offender is liable to a £5 penalty.

DAMAGES FOR OVERSTOCKING.

Under the Ground Game Act of 1880 a tenant has the remedy in his own hands, so far as any damage which hares or rabbits may do, but a landlord who reserves the sporting rights on letting to a tenant a farm, is not entitled to bring on to the land without the tenant's leave more game than can be reasonably and fairly kept thereon, nor allow the game to unnecessarily increase, so as to do damage to the crops. We are dealing with the present position of matters irrespective, of course, of the position after 1st January, 1909.

In the case of Farrer *v.* Nelson, plaintiff was tenant of a farm (exclusive of coppices), and the shooting rights, which were reserved to the landlord, were let by him over the whole estate to the defendants, who had bred a large quantity of pheasants (1,500) and had brought 450 into a wood adjoining plaintiff's field, where the birds damaged his crops.

The decision of the court was in favour of the plaintiff, who had compensation awarded him. Baron Pollock (Justice Day concurring) in his judgment said: "A person was entitled to bring on his land any quantity of game which can be reasonably and properly kept

there, so that nothing unnatural is done, and so long as the lessee of the shooting rights was exercising the ordinary rights which the landlord, who had reserved the rights, might have exercised, he was acting within his rights, but the moment he brings on game to an unreasonable extent or causes it to increase to an unreasonable extent, he is doing that which is unlawful, and an action may be maintained by his neighbour for the damage which he has sustained".

There does not, however, appear to be any case heard and decided in the High Court on the question of compensation where a person who has bred game on his own lands, and such game escapes and damages another person's crops near him.

It is conceived no action would lie against a landlord for game breeding or rabbits in the ordinary course of nature upon his lands, which might damage his tenants' crops, and it is of course quite legitimate to use the land a person may own as a rabbit warren. If rabbits are turned down and they and their young injure the tenants' crops, an action would lie. Further, a person would be within his rights to shift or remove game naturally bred upon the land of a tenant to another portion of his land (Birkbeck *v.* Paget).

Generally speaking the sporting tenant is in the same position as the landlord, so far as damages for overstocking go.

PIGEONS.

Pigeons and house-doves when reduced into possession, as in a dovecot, or shut up at night in boxes, are the subject of larceny at common law, and a person convicted of stealing them is liable to the same penalties as for simple larceny, whether child, young person or adult.

It is also a criminal offence to kill, wound or take any house-dove or pigeon under such circumstances as shall not amount to larceny at common law, offender

being liable to a penalty of £2 (24 & 25 Vict. c. 96, sect. 23).

If, however, a pigeon was doing damage to growing crops on another man's land, and is shot under a claim of right, the above section would not apply, especially where notice given to the owner of intention to kill (Taylor *v.* Newman).

If a man trespass after wild pigeons, and them only, the owner or occupier's remedy would be by an action for trespass.

THE GREAT BUSTARD.

This splendid bird, once regularly found both in England and Scotland, but more particularly perhaps in the counties of Norfolk and Suffolk, although occasionally found upon some of the moors of Berwickshire, the wastes of Lincolnshire and Yorkshire, and the Downs of Dorset, Southampton, Wiltshire and Sussex, but which had unfortunately become extinct, has through the instrumentality and energy of Lord Walsingham been reintroduced into the eastern counties, and considering the interest and importance attaching to the bird we specially refer to it.

As is probably well known, the bustard is peculiar to the Eastern hemisphere and Australia, but it is still fortunately found in many places on the Continent, notably Spain and Portugal, France, Germany, and probably other places, including Tartary, where in winter season numbers of them are, it is said, found together, one of them, it is further stated, being generally placed out as a sentinel by way of giving notice of the approach of danger.

Its body is very substantial and its limbs strong, with long legs and neck, small feet and short beak, somewhat of the ostrich type but with longer wings. A frequenter of the extensive plains, when not on the wing they run with great speed. When compelled by necessity to fly, their flight is swift. They are said to be poly-

gamous, one male accompanying many females, the female bird being very much smaller than the male, in fact only about one-third the size. Their clutch of eggs, generally two or three, are deposited on the ground, often without any pretence towards a nest, on loose straw or the like material, usually amongst the rye or spring corn. When in the height of their plumage the male is of a much brighter and gayer colour.

It may be claimed of the bustard to be the largest of the native birds in Europe, the male being 4 feet in length and 9 feet in expanse of wings—weight from 30 to 40 lb.; and undoubtedly its size had a great deal to do with the bird becoming extinct, as it was not at all likely that so large a bird could escape being observed and fall a victim. The value of the eggs too would undoubtedly be considerable in the eyes of collectors.

The male bird on arriving at maturity is said to possess a pouch on the forepart of the neck under the skin, the entrance to which is beneath the tongue, which pouch is said to be capable of holding a large quantity of water. Its use does not appear to be absolutely clear, though it is surmised by some to be carried about for the use of the brood, but this is questioned by others, seeing it is admitted the male bird is seldom noticed with the female after incubation. Some have supposed this small "reservoir," as it has been termed, is used to supply the bird's thirst whilst on the dreary plains on which it resorts, and that further use is made of the water by squirting it out as a means of defence against an enemy pursuing it. Why the male bird should be specially endowed and not the female is a little difficult to comprehend, but probably, being so much heavier a bird, he is somewhat handicapped in flight. Some people have supposed the bird to be able to live without drinking, and it is alleged that a captive bird kept in a show proved this.

The female bird is said by those very much interested in these birds to be a very close sitter, which would seem rather remarkable considering the nature of the

bird, for it is also said that if her eggs are in the least handled the bird will effectually leave her nest.

From what we can gather it is said the last few bustards seen alive in Norfolk were all females, one being killed in 1879 at Lexham. On Massingham Heath a year or two previously seven female birds were observed.

In the *Norfolk Chronicle* of August, 1900, an announcement was made by Lord Walsingham with respect to an experiment about to be made for the reintroduction of the bird into Norfolk and Suffolk, which we reproduce here.

"An attempt is being made to reintroduce the great bustard in what was formerly one of the favourite haunts of this fine bird, on the borders of the Norfolk Fens.

"This effort is due to the public spirit of an English gentleman, resident abroad, whose love of natural history has induced him to incur considerable expense and trouble in the matter.

"It is hoped that residents in Norfolk and Suffolk will agree to respect the birds, which will probably be at large before this letter appears, and by preventing their destruction will secure the success of an experiment to which the reintroduction of the capercailzie in Scotland affords a parallel instance and an encouraging precedent.

"(Signed) WALSINGHAM."

A number of the birds having been imported from the Continent, in referring to the arrival of the birds in the *Eastern Counties Magazine and Suffolk Notebook* for the month of November following, his lordship wrote as follows :—

"Sixteen birds have been imported and have been accorded full measure of care and hospitality on a large estate on the borders of Suffolk, where they will receive ample protection within the limits of an area of some 50,000 acres, owned by good sportsmen with a friendly

interest in natural history. When these birds arrived, I clearly explained in a short letter to the newspapers that this importation was due to the public-spirited enterprise of an English gentleman resident abroad, and I must entirely disclaim any personal credit for what has been done. Contrary to the inference drawn or implied by the writers of several newspaper articles which have lately appeared, I had nothing whatever to do with the matter, until my advice was asked in what particular locality the best chance of success could be secured, when I made certain suggestions, which have since been followed.

"The first shipment of sixteen birds arrived safely, and up to the time of writing only one of their number has died through an unavoidable accident. The wing feathers were cut to ensure safety of transport, and the time has therefore not yet arrived when they will be completely at liberty to fly when and where they please. In the meanwhile they have become very tame, but before they reacquire the power of flight they will enjoy a run of some 800 acres of open land within the precincts of low wire netting.

"It is a curious coincidence that in selecting a place where the surrounding conditions would be favourable to their liberty, I quite accidentally hit upon the very land on which the last breeding colony of great bustards is known to have existed in England. I am creditably informed that some of the old residents in the district remember a flock of about forty, and can still tell of the manner in which they were approached and killed by men engaged in agricultural work carrying a gun behind their horses."

In speaking of the law on the subject, he adds:—

"It is much to be hoped that the County Councils of Norfolk and Suffolk may be induced, with the consent of the Home Secretary, to give to the great bustard the protection of a close time extending throughout the whole year, in which case those who are interested in establishing a self-sustaining colony

will be encouraged to undertake fresh importations with a view to avoid the danger of inbreeding, which is an almost certain source of failure in any such experiments.

"Although the great bustard is perhaps equally partial to open heaths and large tracks of cultivated land, it is almost exclusively a feeder on green food. So far as my experience goes, farmers need not anticipate any damage to their crops, at the most perhaps the ordinary grass diet may be varied by some picking at turnip-tops; but for many years to come no considerable increase in numbers can be anticipated, and the killing of a few more wood pigeons would probably more than compensate any loss that could possibly be sustained through extending friendly hospitality to the pioneers of our returning pilgrims."

After this able and kind appeal by his lordship on behalf of the imported bustard, and notwithstanding the publicity given to the subject throughout Norfolk and Suffolk in the press, it appears that two of these birds were actually shot on the 20th June following at Finningham, on land in the occupation of Mr. Edwards there, and on the 8th July at Hartismere Petty Sessions at Eye, Suffolk, the person who shot them was summoned under the 3rd section of the Game Act of 1831 for killing game during the close season. Below we give a report of the case from the *Eastern Daily Press* of the 9th July, 1901.

The defendant was present, and pleaded "Guilty" to the offence. The birds, which had been stuffed by Mr. Hudson of Ipswich, were placed on the table during the hearing of the case.

Mr. Lucas T. Cobbold, who prosecuted on behalf of the Norfolk and Suffolk Poaching Prevention Society, said he did not know whether the bench would like him to tell them a few of the facts of the case. The land on which the birds were shot was in the occupation of Mr. Edwards. These birds were included under the Game Act of 1831, and were protected during the

breeding season from 1st March to 1st September. Round this neighbourhood at the present moment, as was very well known, efforts were being made to bring these bustards back into this country. The defendant was a gamekeeper, and he (Mr. Cobbold) must ask them in considering the case to remember that he, of all persons, would probably be aware what these birds were, and that they were included in the schedule, especially as they had been seen in the neighbourhood before, and the presence of large birds such as these must cause inquiry. The defendant must have known that these were the bustards about which there had been so much talk. After he shot the birds the defendant carried one of them about quite openly, and admitted having shot it. The larger bird was found in a pea field adjoining Mr. Edwards' land, and defendant shot it as it stood in the peas. He carried the birds to the station, and afterwards to the bird-stuffers, and he had admitted that the birds were shot. It was not improbable that the defendant would state that he did not know what the birds were. That was a plea that every defendant could set up, and he asked the bench to consider that it would answer any man's purpose to shoot such birds and have them stuffed, and then ask to be treated as a first offender. His society were not at all vindictive, but it was a case which he asked them to treat seriously. They were not birds which did injury, but they fed on slugs, toads and frogs, and those things, and did no damage to corn.

Defendant in reply to the Bench stated he saw these birds, and they were quite strange birds to him, and he thought possibly they might be destructive, though he did not know what they were. He had never heard anything about them, and had never seen anything like them. He had no idea at all that he was breaking the law. He thought it was a foreign bird come over here, a destructive bird, and he did not know that there was anything wrong in shooting it. He did not do it to get any gain by it, and he did not try to sell it. He did

not suppose any one else in the neighbourhood knew it was a bustard.

The Chairman said it was the tendency of every one to shoot birds like these and take them to the bird-stuffers. He understood that was what the defendant did, although he said he did not expect to get anything out of it.

Defendant said he thought it was a pity to "hull" them away.

William Hill, head gamekeeper to Lord Iveagh, said the birds were brought over at considerable cost. They took very long flights, over Suffolk, Norfolk and Cambridge. Every two or three days they would fly away, and then they would return again.

The Chairman.—Have you lost many?

Witness.—We have lost them all but about seven out of the seventeen.

The Chairman.—Shot in this way?

Witness.—I don't know. It is a great pity. They are very interesting birds, and they do no one any harm. They eat no corn whatever.

The Chairman.—Would it not have been wiser to have pinioned them?

Witness said the idea was to get them naturalised to the place. Their wings were cut, and they had only been able to fly for two or three months. Lord Walsingham wanted them to be established all over the country. They were valuable from a taxidermist's point of view. The last one he saw sold fetched £17 10s., so they were worth shooting. He did not think the birds produced would have bred this year. Lord Walsingham sent them to Lord Iveagh, because it was on Lord Iveagh's ground on which they were last known to exist.

Mr. Cobbold said that although they were not actually scheduled they were wild birds.

The Chairman said the defendant would be fined the full penalty of £1 for each bird, and the costs £2 15s. 10d., in default one month's hard labour. The

defendant had been guilty of a very serious offence. If he had not been a gamekeeper he might have had some more excuse, but he had pleaded guilty to killing game out of season. The court had decided that for the present the birds should be kept in the custody of the court.

Considerable regret was expressed and no small amount of indignation felt by all shades of society throughout Norfolk and Suffolk at the shooting of two of these beautiful birds, whose number was now reduced from seventeen to seven, and Mr. Hill addressed the following letter to the *Eastern Daily Press* :—

"I venture to ask you to allow me a little space in your valuable paper to appeal to your numerous readers to protect the great bustard, now flying about over a considerable part of this county and Norfolk.

"These beautiful birds, once the frequenters of our Norfolk and Suffolk heaths, were, in the latter part of the eighteenth century and commencement of the last, most ruthlessly destroyed. But last season, through the instrumentality of Lord Walsingham and others, they were reintroduced, at very considerable expense and trouble, from Spain, where they were caught when quite young.

"Since then they have been fed by hand on this estate, and often return to their feeding-place, taking the food out of their attendant's hand. At other times they stray to great distances.

"They are very interesting to those who have had an opportunity of studying their manners, and, I may say, are quite harmless to the crops, their chief food being frogs, field mice, beetles, slugs, etc.; they will not eat any sort of corn whatever. These facts alone should recommend them to the protection of our farming friends.

"As few people have ever seen a bustard, I may say it is a very large bird, and when flying looks like a large heron, but with more pointed wings, and when standing on the ground the cock birds are nearly a yard high, on

long legs. The back is of a bright brown colour, with black pencillings, belly white, a long neck of light slatey blue colour, with whiskers or moustachios about five inches long.

"The wings show a white bar some two or three inches wide when standing, but when flying show a great deal of white—in fact, looks almost white. The hen birds are much smaller, but of the same colour.

"I had fondly hoped to hear of some broods of young ones being seen, but none such have been notified at present."

So far as the close season for bustards is concerned, the Game Act provides a penalty of £1 per head for killing or taking them between the 1st March and the 1st September following, and the 24th section provides a penalty of not exceeding 5s. for wilfully taking out of nest, destroying in nest, or being in possession of eggs so taken—unfortunately quite inadequate.

Under the Orders of the County Councils of Norfolk and Suffolk, copies of which will be found in another part of this book, both birds and their eggs are further protected.

DEER.

Although deer do not come within the meaning of "game" in any of the Acts relating to game, and thus are unprotected by those laws, special legislation has been considered necessary for the protection of deer, and it is necessary also to have a license to kill them, the Game License Act of 1860 requiring this, though there is an exception applying to deer when pursued with hounds, or persons pursuing and killing in enclosed grounds by owner or occupier thereof, or by their direction or permission.

Deer in Ireland appear to be included in the definition of "game" and a close season is consequently provided.

In England a reservation of "game" would not include "deer," but a reservation of "sporting rights" would (Spicer *v.* Barnard).

When wild on enclosed land, if no grant or any reservation of the sporting rights has been made, a tenant might kill deer under the same conditions as he could kill other game if he abided by the law as to killing deer in the forest or enclosure, etc., in which they are kept.

If, however, the deer are kept in enclosed ground, park, etc., where they are tended to and fed they come within the same category as cattle, and to steal them would be felony.

The following Acts are still in force as to deer:—

By 24 & 25 Vict. c. 96, sect. 12, whosoever shall unlawfully and wilfully course, hunt, snare, carry away, or kill or wound or attempt to kill or wound any deer kept or being in the unenclosed part of any forest, chase or purlieu, shall for any such offence on conviction forfeit not exceeding £50. A subsequent offence is felony and the offender is liable to imprisonment for two years, and, if a male under sixteen, with or without whipping.

Section 13 of the Act is practically the same offence, but in the *enclosed* portion of the forest, etc., or in any enclosed land where deer are usually kept, and is felony, with same punishment as in preceding section.

Section 14 deals with the unlawful possession of any portion of a deer or any snare or engine on the person or premises of the offender who cannot satisfy the justice before whom he is brought that he came by same honestly or had lawful occasion for the possession of the snare, engine, etc. Fine not exceeding £20. Where a conviction cannot be obtained against a person charged under the above the justice may summon before him all persons through whose hands the deer has passed, and if the person first receiving the deer shall not satisfy justice that he came lawfully by same he shall be liable to forfeit and pay not exceeding £20.

Section 15 deals with the setting and using of snares and engines for the killing and taking of deer in any

forest, chase or purlieu, whether enclosed or not, or in any bank or fence dividing same from any land adjoining, or in any unenclosed land where deer are usually kept. Penalty £20.

Section 16 authorises any person entrusted with the care of deer and his assistants to demand from every person entering forest, etc., with intent to hunt and kill deer any gun, firearm, snare or engine in his possession, and any dog brought there, and if same not immediately given up when requested they may be seized on such place or in fresh pursuit for the use of the owner of the deer. Should any of the offending party unlawfully beat or wound any of the persons referred to or assisting, such offenders shall be guilty of felony and liable to imprisonment for not exceeding two years, and, if under sixteen, with or without whipping. The beating or wounding must be committed on the keepers at the time they are attempting to seize the guns, etc., under the section or in attempting to arrest the defendants.

Provision is made under section 103 for the arrest of any person found committing any offence of either an indictable or summary nature and taking such offenders before a justice. Search warrants may also be granted under the section for the recovery of property stolen, as in the case of larceny of other property.

It would be a question of fact for the jury to be satisfied upon, as to whether the offender was really wilfully and unlawfully coursing and hunting, etc., deer on the land.

In Scotland it would appear the 2 & 3 Wm. IV. c. 68 affects persons committing a trespass after deer.

In the indictable offences bail is discretionary and the costs of the prosecution are allowed by the county, the cases being triable at quarter sessions or, of course, assizes.

SWANS.

Swans are not included in the term "game" in any of the Acts, but when stolen are the subject of larceny at common law, where lawfully marked, though at large in a public river, or even unmarked when taken from a private river, moat or pond where they are kept, but otherwise it would be a trespass in respect of them.

Larceny cannot, however, be committed of swans' eggs, the legislature having included them in section 24 of the Game Act of 1831 and imposed a penalty of not exceeding 5s. per egg upon those found wilfully taking them out of the nest, destroying in the nest, or knowingly having in their possession eggs so taken.

Swans are the exception to the general rule as to "estrays" applicable to animals *feræ naturæ*, and if a person takes an estray he must, so long as he retains it, give it the necessary food for its support. If a swan regains its liberty and is caught at sea or in a navigable river it would *prima facie* belong to the Crown as a royal bird, and the king has thus a right to seize wild and unmarked swans as his prerogative, and may grant such right to another person within a certain area, but this would hardly exclude a subject's right to kill a swan found on his own land which was practically *feræ naturæ*.

It requires a grant from the king or prescription for a subject to have a swan mark.

It may here be remarked with respect to cygnets that an exception is made in the law as to their ownership. Unlike the broods of other tame and domestic animals, which belong to the owner of the dam or mother, cygnets belong equally to the respective owners of the cock and hen bird, the reason apparently being that the owner of the one bird does not suffer more than the owner of the other during the breeding season, the male bird being recognised for his constant association with the female during the time of incubation of the eggs and nurture of the young birds.

A FEW INTERESTING CASES.

Wounding Keeper.

(*Three or more armed with offensive weapons on land by night.*)

This was a case in which a keeper was wounded one night, which resulted in four men being charged with entering land together for the purpose of taking game, armed with certain offensive weapons, to wit, stones; also with feloniously wounding with intent.

On the original hearing before the magistrates only three of the men (*viz.*, A, C and D) were before the court, the fourth (B) not having sufficiently recovered from injuries he had received, to be able to appear, and of the three, one (C) was discharged, the justices not considering a *prima facie* case had been made out against him, the other two (A and D) being committed for trial. Subsequently the injured man B, was, on his recovery, charged with the above offences and also committed for trial, and the three, A, D and B, took their trial at the forthcoming Norfolk assizes.

It appears that, according to the evidence of E, he on the night of the 8th August, or morning of the 9th (Coronation Day), was out attending to his duties on land strictly preserved, where he reared his master's pheasants and wild duck, and from where he had a month or two previously had some forty-six young ducks stolen. He had a double-barrelled gun with him at the time, and his son was in the hut close by. He was resting on a coop, and towards 1 A.M. he appears to have gone to sleep. He was awakened by something he heard, and on looking round saw four men in front of him looking over wire-netting about ten or fifteen yards from him.

It was a starlight night but no moon, and he could not tell who the men were. He got up and turned round and went towards the men, and asked them what they wanted, and had scarcely got the words out of his mouth, he said, when something struck him on

the eye and nose, and without pointing his gun at any one it went off, both barrels. Some one called out: "You've done it now. You've shot me—both barrels". He went to where the man was and asked him his name, and he said: "I may as well tell you who I am, I am A of H". E then woke up his son, who was still in the hut, and sent him for a horse and cart, and A, after it was alleged admitting he had no business to be there, and that he had been persuaded to come, was despatched to the doctor's, and thence to the workhouse, where he remained for several weeks under the doctor's care, suffering from the effects of the shot wounds. E was taken home and put to bed and attended by a doctor, where he remained a week. In consequence of information received by the police an inspection was made, and near the coop referred to, several large stones were found, one near the coop with blood upon it. A ploughed field adjoining was also examined, and the footprints of four men going towards the coop, and of three going back again, the three agreeing with the three of the four going towards the coop. There was no footpath. B (the man last committed) was seen by the police the day of the alleged offence at his home, and in reply to a question put to him, as to what was the matter with him, said: "I was going out with A and got shot, and how I got home I don't know". Casts were afterwards taken of the footprints on the ploughed field, and sticks picked up about the spot, and it was proved that the ground was grassy, and that there were no stones similar to the ones produced (the ones picked up) and that such stones must have been brought by the men, though this was disputed by the defence. Whilst A and B were in the workhouse, unable to appear before the court in consequence of their injuries, they were seen by the police and asked if they wished to make any statement, in case their injuries should prove fatal, and A declined to do so. B made a statement (which was marked as an exhibit in the evidence of the superintendent on B's committal for trial) to the following effect: "I left

home between 10.30 and 11 in company with A to go to S. When me and A were walking the field together after some rabbits, just as we got to a place where there are some hurdles, there was a man shouted out. I think he said, 'What are you after?' We both stopped dead. Next thing I heard was the report of a gun, and I felt a stinging sensation all round my leg. I felt half dazed. After I heard the second shot I heard A shout out, 'I'm shot'. I heard a man call out, 'I will kill both of you'. I was some few yards from A and saw him fall. I left him laying there and ran away as fast as I could home, but was hours in getting there."

A, who was left on the ground, was, of course, the only one that was identified, but the theory of the prosecution was, that had the other men been arrested, nets, etc., would have been found in their possession. The above facts, with other miscellaneous details, were proved at the assizes, when the three defendants A, B, and D were ably defended, and after the prosecution had been closed, during the hearing of which Justice Grantham, after examining the casts of the feet marks with the boots, said he did not think it was sufficient identification as they had been made with soft materials, and the marks of identification might be removed. The prisoner D was shortly afterwards discharged, at the request of his counsel. A doctor proved attending on B who had from 150 to 200 shot wounds on his legs, and whose temperature had been up to 103 at one time during his visits. He had also attended A, as well as B, and did not consider the latter was in a condition to make a statement to the police as stated. B's condition was the worst, and that then, at the assizes, he was "loaded up with shot". That both men must have been near when shot. A went into the box and gave evidence on his own behalf to the effect that on the night in question he and B went to get some mushrooms on the marsh, and clams. When they got near the stile, "crack-crack" went a gun and he was hit on the left side and knocked down. He shouted and yelled,

and hopped off towards the stile. He heard the click of a gun again and shouted out, "For God's sake don't shoot again," and that E said, "I will kill the pair of you," and putting the gun to his shoulder fired again at him, and knocked him off his feet. E then ran off and came again with his son. E said, "I did not mean to serve you so bad as that, I only meant to give you a 'stinging'."

In cross-examination, when asked more about the mushrooms, he replied: "Well, you don't want a man to incriminate himself, do you?" but persisted that E put the gun to his shoulder and fired at him. He had only been out of prison a week when this happened. That was for poaching. The March before he got four months for night-poaching and a month for assault, but he was on the road at the time and he didn't call that "night-poaching". He was then questioned on a long list of previous convictions.

B was called to corroborate A, and swore there were only two of them there, A and himself, and that they threw no stones, and took none with them. There were plenty of stones at the place where they were hurt. He had known A several months, but had not been out with him before. Could not say how the keeper got hurt. The solicitor for the defence also proved having been on the place in question in October, and there were any number of stones lying about.

Counsel for the defence, in addressing the jury on behalf of the prisoners, in a long and powerful speech, said that if either of the prisoners died E might find himself in a very serious position. It was an insult to ask the jury to believe his story. Undoubtedly he meant to "pepper" any one who came near his pheasants, and was much alarmed when he found what he had actually done.

The judge in summing up to the jury justified their action earlier on in the day, when they intimated as he assumed they were satisfied with the evidence for the prosecution, subject to any defence there might be, and

said he wished juries would more frequently give such intimations as much time might thereby be saved. The two men, he said, had sworn there were only two men present at the time of the alleged assault on E (they themselves), and that they did not throw the stones, and as there had no doubt been a stone thrown, there must have been another present who threw the stone, which brought the case within the statute. The jury found both "Guilty," but recommended B to the clemency of the court. Counsel for the defence hoped in giving sentence the judge would remember the injuries both men had received.

The judge said he quite endorsed the sentiment of the jury, but the charge A had made against E almost deprived him of the power of giving it effect, because it was a cruel charge made at the last moment. Had A not been seriously injured, he would have sent him to penal servitude for a considerable time. He would be imprisoned for six months and B would be sentenced to two days' imprisonment, which meant his discharge.

This case at the time caused considerable interest, not only in N. and the locality where it occurred, but elsewhere within the county, and numerous letters appeared in the press, with regard to the merits of the case, and the summing up by the judge to the jury, but as we are not able to give the summing up in detail, we refrain from commenting, allowing our readers to put their own construction upon the matter.

ANOTHER NIGHT-POACHING CASE.

(*Three or more together entering armed, and with wounding.*)

About three o'clock one morning two keepers and a watcher were out attending to their master's interests, when they heard the report of a gun which proceeded from a wood close by of about sixty acres, and in which were a quantity of pheasants. The keepers, desirous of ascertaining who was responsible for the firing, went round to get into the wood, and in going heard another

shot in the wood. On entering the wood by one of the gates they saw the fire "fly" from a gun, and perceived some men advancing towards them. The keepers secreted themselves in the ditch by the drive in the wood, and found the party advancing towards them to consist of five men with two guns. As soon as the poachers got opposite where the keepers were, the latter came out of the ditch and asked the poachers what they were doing there, and one of the latter raising his gun over his head by the barrel with both hands, struck at the head of the keeper who had addressed them. The keeper partially warded off the blow with his stick, but the stock of the gun hit him over the head, and the gun snapped in two, the stock being severed from the barrel, and the barrel retained by the poacher. The keeper, being a strong stalwart fellow, was, however, still able to defend himself, and struck out at the poachers. A second keeper seized the poacher who had used the gun round both arms from behind, the poacher retaliating by thrusting the muzzle of the barrel of the gun several times into the keeper's face and eyes and very much injuring them. There was a general *mêlée* when another of the poachers advanced to the keepers with a gun, and pointing it at the first-mentioned keeper, said: "Stand back, you b——, or I'll blow your b—— guts out," being only a yard or two from him at the time. This poacher was well known to the keepers, and after his name had been called out, was told not to run away. Eventually, after some pheasants, quite warm (which had been shot), were secured from one of the poachers the keepers had got the better of, the poachers retired, pelting the keepers with large stones which they were alleged to have brought with them in their pockets, as there were no stones in the wood. After threatening to shoot the keepers, the poachers made good their escape, but not before they had injured two of the keepers with the stones.

The firing in the wood having been heard by a constable patrolling the roads in the vicinity with his bike,

he rode for assistance, and, returning, the poachers were followed but not overtaken, and this was hardly to be expected, seeing the men happened to return home by the fields, a not unusual practice with poachers during midnight hours. Warrants were issued for several of the men who were known, but only executed as against one, who gave himself up some little time afterwards, alleging he was not one of the parties wanted. He was, however, in due course duly committed for trial, when an *alibi* was set up, and the jury disagreeing the accused was bound over to take his trial again at the next assizes. The defence was again an *alibi*, and although the judge on this second hearing summed up in the prisoner's favour, the jury returned a verdict of "guilty," and he was sentenced to twelve months' imprisonment.

One little matter which probably influenced the jury on the second trial was an attempt made by the accused to prove that a dog described by the witnesses for the prosecution as being with the poachers in the wood on the night in question could not have been the accused's dog. A dog was brought into court, but unfortunately for the accused it was sworn to by witnesses for the prosecution as not being the dog seen by them at the house of the accused a day or two before the trial, which they knew to be the prisoner's and which, it was alleged, resembled the dog seen in the wood, though they would not positively swear it was the dog.

It was somewhat singular that the dog was not mentioned in the evidence of the keepers on the committal for trial of the accused, and it was not until a day or two before the assizes on the second trial that it was brought to our notice, when we at once took the necessary steps for the animal to be identified, and although we got some rather hard hits from counsel for the defence for keeping back this additional evidence, we were really not to blame, as the dog was only seen and identified at the house on the Sunday before the trial on the Monday.

An attempt was subsequently made to obtain the

prisoner's release from jail on the ground that the evidence of identification was insufficient, but we understand that the Home Secretary declined to interfere.

Case of Taking Game without License.

About half-past ten one night in the month of January two keepers were out watching, and, whilst passing along the highway on their beat, heard something fluttering on the other side of the fence, where there was a kitchen garden, the occupier of which lived near. The keepers knowing their employer had the right of sporting over the land in question, got over the hedge, and an examination of the place disclosed the fact that a hen pheasant had been caught in a trap, consisting of a balance-board placed over a hole in the ground two or three feet deep, the board being worked and kept in position by a piece of elastic. The trap was made very near the bottom of the bank separating the highway from the garden, and from the wire netting on the top of the bank (fixed to keep the ground game out of the garden) were two rows of sticks fixed in the ground upright, running on each side of a pheasants' run, to the trap board. The netting was in this particular place raised, no doubt intentionally to admit of game, either winged or otherwise, getting under it and running down the run on to the trap-board. On a further examination of the garden the keepers found another trap very similarly constructed, with this exception, that instead of a hole dug in the ground a barrel was inserted. They decided to watch the traps, and did so from the other side of the road under cover of the brushwood till early next morning, when the head keeper was obliged to leave, leaving the other keeper to watch alone. About eight o'clock defendant is seen to come from his house close by and go to the trap which contained the pheasant, kneel down on the ground and look in the trap, and, getting hold of the pheasant, was alleged to have killed it by doubling it up with his

hand. As he was going away with the bird in his hand, the keeper spoke to him, when it seems there was an attempt to throw the bird away, which the keeper went over the hedge for and secured, the defendant remarking the trap had only been set the day before, but not for pheasants, and (according to the evidence of the keeper) admitting that he had killed the pheasant.

The head keeper corroborated the under keeper as to the finding of the bird in the trap as described.

The defendant, electing to be sworn, stated that the bird was dead when he went to the trap, and that it was his intention to take the bird to the sporting tenant, denying he told the under keeper he had killed the bird. After the defendant had called a witness to speak to his character, the bench retired, and on their return into court dismissed the case, remarking there was a doubt in their mind as to whether the under keeper from where he was could see the bird killed from the position of the trap.

Taking Partridges' Eggs from Nest.

A young farmer, being suspicious of a certain individual, decided one Sunday morning during the egging season to watch a partridge's nest with two eggs in, which was on the bank of a field. He was watching on the bank of a field an occupation lane running bet ween where he was and this bank on which was the nest. He knew the defendant's movements, and seems to have expected him. Having satisfied himself of the safety of the nest, he placed himself so as to keep the site of the nest in view. The defendant came down the lane with his two little boys about five minutes after the eggs had been seen safe. He is seen to "brush" the fence with his stick and stop opposite the nest, go to the nest and put his hand in it and take something out of it, which he put in his pocket and walked on. Witness did not immediately come through the fence and accuse the defendant of taking the eggs, because

there was a second nest farther down the lane which he wanted to see if the defendant would take. Defendant continued to "brush" the fence, but did not find nest number two, and, as soon as he had passed it, witness came out from where he was watching and walked across to the partridge's nest and found the nest empty. He at once followed after the defendant, who, when he saw witness coming, left the hedge side and walked in the centre of the lane. He was overtaken by the witness just as he had rounded a bend of the lane, and challenged with taking the two partridges' eggs. Defendant denied the taking, and asked that he and his boys should be searched. Witness did not do this, but took the defendant back to where the nest number one was, which defendant had been seen to go to, and pointed it out to him, but still he denied taking the eggs. There was ample time for defendant to have thrown the eggs away on rounding the corner unseen.

The defendant, in his statement to the court, denied taking the eggs, and stated there were plenty of eggs he could have taken had he wished. The justices retired, and on their return into court said there was not sufficient evidence to convict, and the case would be dismissed.

If ever a prosecuting solicitor had reason to feel disappointed with the result of the justices' decision, this, we thought, was the case.

We were particularly sorry for the young farmer, who seemed to think the court had not believed his testimony, and were inclined to think he had committed perjury, but we were shortly to be enlightened. Before leaving the court we were informed by the justices' clerk that the case was not free from doubt, that had it been a case of murder the prisoner would undoubtedly have had the benefit of the doubt. Shortly afterwards we had the pleasure of speaking to one of the justices who had sat on the case, and were asked if we had any experience of the habits of stoats, which, he stated, had been known to have mysteriously carried off

nests of eggs in an incredibly short space of time. We replied in the negative, which at that time was the case.

Very shortly after this decision, particulars of a case in point came under our notice, for which we were very thankful, as it removed entirely the impression still existing in our mind that the decision of the justices in the last case was hardly satisfactory to the prosecution.

Whilst walking from the railway station to the court-house with a gamekeeper (still in the egging season, so the reader may imagine what our conversation was about), we casually mentioned the above case. "Ah," he said, "them stoats be funny things. Let me tell you of a case that came under my own particular knowledge." He then went on to explain that he knew of a nest of nine pheasants' eggs on the bank of a field. Near this bank a labouring man was working in the field, and the keeper being somewhat suspicious of the man, kept a sharp look-out. He was not watching the labourer incessantly, but an hour after seeing the eggs safe he went to examine the nest to see if they were still safe, and to his surprise found the nest empty. He went at once to the labouring man, as there had been no one else about who could have taken the eggs, and told him he suspected him of having taken the eggs, and that he would be charged with taking them. The man was horrified, strenuously denying having even seen the eggs, much less touched them, and was willing to be searched. The keeper took the labourer to show him the empty nest, but a few paces from the nest one of them saw a pheasant's egg protruding from a small hole on the bank, and on a further examination of the hole the remaining eight pheasants' eggs were found. It was a stoat's nest, the eggs having been carried there by the occupants, who had not had quite time to safely deposit the whole of the eggs in the interior of the bank and out of sight.

This explanation was quite sufficient for us to feel more satisfied with the decision of the justices in the case of unlawful taking of the two partridges' eggs.

Alleged Aiding and Abetting in Unlawful Possession of Game Eggs.

A man was charged with the above offence, and in order that our readers may the better follow the case we give a copy of the charge contained in the information.

"For that A B (principal) on the day of at unlawfully and knowingly did have in his possession sixty-one eggs of a certain bird of game, to wit, a partridge, and nine eggs of a certain bird of game, to wit, a pheasant, which had been theretofore by him, the said A B, unlawfully and wilfully taken out of certain nests upon certain land there situate, he, the said A B, not then having the right of killing the game upon such lands and not having permission to take the eggs as aforesaid from the person having such right, contrary, etc. And that C D (the aider and abetter) unlawfully was then and there present unlawfully aiding and abetting, counselling and procuring the said A B to do and commit the said offence."

The defendant was represented by his solicitor.

In opening the case for the prosecution, the following facts were referred to: A B was a poor agricultural labourer out of work, and, having a sick wife dependent upon him, determined to supplement his shattered finances by doing a little poaching. He goes out on to certain lands very strictly preserved in the neighbourhood of his home, and there takes the eggs mentioned, which he placed in a red and white pocket-handkerchief, and then hid them up in a hedge, intending, after having made arrangements for their sale, to return and retake possession of the eggs and hand them over to his proposed purchaser. With this view, he goes to an adjoining parish, and having met C D, told him of the eggs and where they were. C D, as would be proved, said to him, "You go on first, and I will come on afterwards and drive on and pick you up," and this was agreed upon. Before

A B gets to the place arranged between them (which is a gate on the highway leading down to where the eggs are secreted), C D overtook him, and, as arranged, A B asks C D for a lift. When they get to the gate, A B gets out of the trap, and goes over the gate and up to where he has hidden the eggs in the fence. As he puts his hand on the parcel of eggs in the handkerchief, two keepers in the employ of the owner of the land in question on which the eggs had been taken, who were watching the parcel (having missed the eggs and traced the feet-marks of the culprit in the grass), sprang out from their hiding-place and took possession of the eggs from A B. A conversation follows, and C D, who up to this time is waiting on the road-way for the return of A B with the eggs, but sufficiently near to hear what has transpired, is heard to drive off, no doubt having heard the conversation. A B, being caught red-handed, then made a clean breast of it, and stated where he had got the eggs, and the arrangements he had afterwards made for disposing of them to the defendant C D.

The owner of the land and prosecutor did not wish to prosecute A B after the open statement he had made.

It was contended that as the defendant C D was charged with aiding and abetting A B in the unlawful possession of the eggs at the time they were taken from him by the keepers, and not in the unlawfully taking them out of the nests (he, A B, being still in the unlawful possession of them), the information as against C D for so aiding and abetting in such unlawful possession would apply.

On A B being sworn and detailing a portion of the above facts, an objection was raised by the defendant's solicitor to the information, which, he submitted, charged his client with being an accessory before the fact, as it appeared the offence was committed at 3 P.M., and it was not until 8.30 that A B saw C D. In reply to this, we endeavoured to point out that the information charged the defendant with aiding and abetting, not in the *taking* of the eggs, but with the *unlawful possession* of them at

the time the keepers came upon him with the parcel of eggs in his possession, but the information was dismissed.

Poaching Prevention Act. Unlawful Possession of Game Eggs.

The defendant in this case was charged under the Poaching Prevention Act with being in the unlawful possession of a quantity of pheasants' eggs on the highway, when searched by a police officer who suspected him of having been on land, etc.

The defence was that the eggs were duck eggs.

The constable proved calling on the defendant to stop on the road whilst driving a horse and cart, as his suspicions were aroused in consequence of what had previously transpired. Instead of stopping, the defendant whipped up his horse and endeavoured to get past the officer, who seized the reins, and with considerable difficulty stopped the horse. He then told the defendant that he suspected him of coming from land where he had been unlawfully in search of game and of having game in his possession, and that under the Poaching Prevention Act he should search him. All the defendant said was "Oh," and immediately removing the lid of a large hamper underneath the seat of the cart, containing a large quantity of game eggs, at once commenced jamming his boot on the eggs in the hamper. The officer let go the horse's head with a view to seizing the hamper, when the defendant urged on the horse. The officer had to again seize the horse by the head, the defendant trying his level best to obliterate any signs of eggs by stamping his boot again and again amongst the broken eggs in the hamper, turning them over with his hand and again stamping them down amongst the straw and litter. After several abortive attempts on the part of the officer to take possession of the hamper (the animal being a spirited one), he was obliged to hold the horse's head until he was reinforced by another constable, who then took the head.

The officer first mentioned then took possession of the hamper, partially full of broken pheasants' eggs and straw, and told defendant he should seize what remained and report the case, the defendant replying, "They are only duck eggs". The broken eggs were very shortly afterwards examined by an expert gamekeeper, who swore they were all pheasants' eggs.

The defendant appeared on the case being called, and pleaded "Not guilty," alleging, as before stated, that the eggs were duck eggs. £2 fine, and costs 14s.

Unlawful Possession of Game during the Close Season.

The defendant in this case was charged with being in the unlawful possession of twelve live partridges on the 23rd August.

The defendant was a labourer, and on the date named came on to the railway station platform at W. and through the door into the waiting-room and booking-office. Just about this time two men drove up to the waiting-room by the opposite door, and one of them brought into the waiting-room, where the defendant then was, a hamper. Defendant said: "Book that to A of H.," giving name and address. This was to one of the porters, the defendant being looked upon as the consignor, telling the porter they were pigeons for a pigeon-shooting match at H. The hamper was weighed in the ordinary course and its weight was 24 lb. At the time the hamper was brought into the waiting-room it had no label on it, but one was obtained from the cart and addressed to the person before alluded to. It appears the two men in charge of the hamper had been asked by the defendant whom they overtook on the road to give him a lift with the hamper, and as they were going past the station they agreed.

The hamper was duly placed in the van and on the way to H. the guard in charge, not being quite satisfied with the form of the "way bill," which described the

hamper as containing "pigeons," and becoming suspicious at not hearing the usual "cooing" noise made by pigeons, examined the hamper, and finding the birds to be live partridges instead of pigeons as described, altered the way bill to "live partridges". He was not able to exactly swear to the number, and although from the weight of the hamper it must necessarily have contained twenty (as the empty hamper only weighed 7 lb., which would leave 17 lb. for the birds), he would not positively swear to more than twelve birds being in the hamper. As the birds would probably be young birds they would not weigh more than ¾ lb. each. At that computation twenty-two birds would weigh 16½ lb., which would leave ½ lb. to spare.

Defendant took a single ticket to H., and travelled by the same train as the hamper, which was removed from the train there, the defendant getting out there also. The hamper was duly delivered at the address at H., and the hamper and the defendant returned from H. by the same train later on to Norwich. As the train returned through W. station the same hamper was thrown out of one of the carriage windows by a passenger whose face was not seen. On its examination a quantity of partridges' feathers were taken from it, but there were no pigeons' feathers in it. A week after defendant called at the station for his hamper which was handed him and a receipt taken.

The defendant was very ably defended, but in the end he was fined £12 and £2 1s. costs.

Subsequently the consignee above referred to was charged on several informations with being in the unlawful possession of partridges during the close season. Only two cases were, however, proceeded with, in one of which the defendant was fined £10 8s. and £3 18s. 6d. costs.

Using Gun for taking Game and Wounding valuable Dog worth £50.

This was an interesting case.

On the morning in question two gamekeepers were

watching in a wood at E. when they heard the report of a gun which proceeded from another wood near in another parish. As they were going there several more shots were fired getting nearer. The keepers having got to the wood in question they secreted themselves by the side of the drive, when they saw the defendant coming along towards them. They had with them a very valuable watch dog (bull and mastiff), trained to prevent poachers from getting away by running round them, which was muzzled. Defendant had got his pockets well filled and was carrying a gun in a sporting attitude quite prepared for another shot if at all practicable, and looking up the trees for the pheasants. As soon as he caught sight of the keepers he was off like a roe, and being noted for his powers as a pedestrian he soon left the keepers, following in hot pursuit, behind. As he was gaining on the keepers they liberated the dog, still muzzled, and as soon as the dog got up to the defendant he deliberately put the barrel of his gun (an old muzzle loader) to the side of the dog and fired. The animal reeled and fell, and as the defendant made good his escape he threw away one after another several pheasants and lost his hat. He got away, but was well known to the keepers, who on returning picked up the pheasants thrown away by the defendant, which were quite warm and had been shot, and afterwards his cap, coat and gun were picked up. A search was then made for the dog, which they found covered with blood, shot right through the shoulder, which shattered the blade, 200 yards away from where he had been shot. A door was taken off its hinges and the dog was put on it and taken home. He was attended to by a Norwich veterinary surgeon, who, after taking a quantity of paper and several pieces of bone out of the wound and dressing it, was very hopeful of his patient recovering. The defendant was ably defended, his defence being an *alibi*, but that he (or whoever it might be) would have been justified under the circumstances in their own defence in doing what was done. The justices decided to con-

vict and fined the defendant £3 and costs, £2 1s. 6d., or one month for the poaching, and ordered him to pay £20 towards the injury to the dog, and 12s. 6d. costs, in default two months, which was paid.

We are glad to say the dog eventually recovered, and goes about again much as usual, though not as he was. The veterinary got exceedingly attached to his patient, and feelingly told us that when he had been dressing the wound, and using his knife to get away the bad flesh, not a whimper ever came from the dog, which only looked up pleadingly to him, as much as to say: "Be as merciful as you can, governor, with that knife".

Alleged Unlawful Possession of Game Eggs.

An interesting case was heard in which a man was summoned for having in his possession 250 partridges' eggs which had been unlawfully taken from land on the 15th May. He was further summoned for a similar offence respecting 220 eggs on 22nd May and 125 eggs on 24th May. A second defendant was summoned for aiding and abetting in all the three cases.

The case of 15th May was heard first. Both defendants pleaded not guilty, and were ably defended.

The prosecuting solicitor in his opening said: In this case they had to deal with a matter which had given a vast amount of trouble in the neighbourhood for months past, and in consequence great expense had been incurred.

On 15th May last a box of eggs was left at B. station and was consigned to A B of C. That box was followed and subsequently opened by a detective and was found to contain 250 partridges' eggs packed in three layers in a most careful manner. The evidence that he had to bring before them would be entirely of a circumstantial nature, because it was impossible to prove absolutely directly the land from which the eggs were stolen. In this case the eggs were consigned to Mr. A B, who was head gamekeeper on a large estate, and when the agent

was communicated with and found out what was happening he immediately informed his employer that it was alleged he was receiving eggs from illicit sources. The employer immediately placed the matter in the hands of his solicitors, who made every inquiry concerning the delivery of the eggs and the source from whence they came. No doubt his friend would plead on behalf of the defendants that they were agents of another firm of gamedealers. It was necessary for himself to prove where the eggs came from. On the 13th June the solicitors referred to wrote——

Solicitor for defence.—That is not evidence; you have no right to introduce correspondence from a third party.

Solicitor for prosecution.—The eggs were ordered by the landowner referred to from the gamedealers referred to, who supplied a part, and the other part was supplied by the defendants. It is my duty to prove the eggs came from him to the consignee in the first instance.

Solicitor for defence.—I object, and I wish to take the magistrates' ruling on this point. It is unfair for such a thing to be mentioned, unless it can be supported by evidence. What transpired with the gamedealers is not evidence.

After consultation the chairman said they would rule that the correspondence could not be produced.

Solicitor for the prosecution.—Very well.

The following letter was sent to the defendant by the landowner's solicitors:—

"On the 7th June the E. A. G. P. Society wrote to —— [the landowner] with reference to the partridges' eggs ordered by him from —— [the gamedealers], who now inform him that they obtained the same or the greater portion of them from you. The society by this communication evidently seek to make out that the eggs have been improperly obtained by you. Under these circumstances it is the duty of —— [the landowner], towards the society and himself, to make the fullest inquiry

into the matter, and we have to ask you to inform us by return of post where you obtained the eggs, and give us any further information you can."

In reply to this defendant wrote stating that the eggs came from his own place. The landowner showed through his solicitors, that on his part he had no wish to receive goods of which there was a doubtful history. He might add that the landowner, through his solicitor, had rendered the society every assistance in his power under the circumstances.

From the 8th May last to the 24th no fewer than 4,000 eggs were sent away from C. station by the defendants.

Solicitor for defence.—What has that to do with the case? I am not answering 4,000 eggs. I am answering 250.

Solicitor for prosecution, continuing, said he would prove that at the present time the defendant's total holding was seventeen acres, and, furthermore, he had no license to deal in game. Another witness would be called to say that having watched the land in the defendant's possession all the summer he practically found no partridges there at all. Also as a matter of comparison he would prove that one partridge egg per acre was a very good average, whilst two eggs per acre was a very big average, so it would appear that it was impossible for the defendant to take 100 much more so 250 eggs from his land. Furthermore, he would prove that eggs had been missing from the land in the immediate neighbourhood of defendant's occupation. He further submitted that as the defendant had elected to plead that the eggs came from his own land, or land whereon he had the sporting rights as proved by letter in his own handwriting, the onus of proof rested upon him to prove that fact, and that the eggs were taken from his lands. He quoted section 42 of the Game Act in support thereof.

A rate collector produced the valuation list which showed that the defendant was rated for seventeen

acres of agricultural land. He was not rated in respect of sporting rights.

Cross-examined.—There were several acres of land wired in for the rearing of game, and also in addition to that space there were other woodlands in defendant's possession.

The stationmaster at C—— produced the "way bills" for May. He produced one for 15th May, a box of eggs for A B.

Chairman.—How do you know they were eggs?

Solicitor for prosecution.—I am going to prove that.

A railway clerk at C—— Station said he knew defendants, and on the 15th May one of the defendants brought a box to the station. He produced defendant's signature.

Cross-examined.—There were two clerks in the office. He could not say he was in the office when the signature was signed.

Another booking-clerk said he knew the defendant and had seen him write. The letter produced was, he thought, in defendant's handwriting.

The Clerk.—Can you swear positively?—No, but to the best of my knowledge and belief it is.

A gamekeeper said the land he looked after ran up to within 400 and 500 yards of defendant's. The border had been shot very hard, but in spite of that a considerable number of partridges nested there. Early in May or late in April, they missed a nest or two from the border.

One egg per acre on the average of forty would be a good average of eggs to pick up. It would be a heavy lot to pick up two. To talk of six or seven eggs per acre would be an impossibility. He knew the land occupied by the defendant. It would be impossible to pick up 150 eggs on such a small holding. He had not known partridges to lay successfully in confinement. During an experience of thirty years he had not known a partridge to make a nest in confinement. By confinement he meant a pen of five or six

acres. Partridges confined to that would lay some eggs; an occasional one might be found, but no nest would be made.

Cross-examined.—There have not been any prosecutions at B—— this season.

An estate agent proved his employer's estate almost touched B——. He could not say he had missed any eggs from the B—— borders. He had taken an occasional stroll near the defendant's occupation, and had never seen any partridges. He had been there for the express purpose of seeing if there were any.

It would indeed be a good place where one could pick up two eggs per acre.

Cross-examined.—He had never gone into calculation. He was speaking generally. It was recognised that one egg per acre was good. He had walked round the defendant's place several times. Did not touch the land. Could tell if necessary how every field is cultivated.

A clerk to landowner's solicitors said that on the 13th June the firm wrote to the defendant as before mentioned. A reply was received. Witness was handing it in, when this was objected to as no actual proof of the handwriting had been given.

An argument followed on this point and the bench allowed the letter to be read. It stated: "In reply to yours *re* partridges' eggs supplied to —— [the game dealers], I beg to say they came off my own place". This completed the case for the prosecution.

Solicitor for defence submitted that there was no case to answer. There was no evidence that either of the defendants was seen in charge of that box, or that the box contained eggs. There was no evidence from any person that the box was ever opened, and therefore they must not assume that it contained eggs. The evidence was of a most flimsy character. The main feature was that on the 15th May there was no proof that either of the defendants had possession of the eggs, and he would ask the bench to say that there was no case for him to answer. The magistrates consulted in

private, and upon their returning to court the chairman said the bench had decided to dismiss the case.

Unlawful Possession of Game Eggs.

At A—— a dealer appeared in answer to a summons for having in his possession 617 eggs of game, to wit, 157 pheasants' eggs and 460 partridges' eggs, on the —— May.

Counsel for prosecution said the charge was for being in unlawful possession of a large number of eggs of game, and was brought under section 24 of the Game Act, which he read. The present case was one of considerable importance, because there was no doubt that illicit dealing in game eggs went on to a large extent in Suffolk and Norfolk, and it was difficult to detect, as eggs could not be easily identified, and could be readily taken from one place to another. A high price was obtained for them, and if people bought them without making proper inquiries, the offence merited a heavy penalty. The facts in this case were very clear and simple. The defendant was a licensed dealer in game. Under his license he was entitled to buy eggs from persons who obtained them lawfully and cared to sell them. On the —— May, about 2.30 P.M., certain police officers were on duty in L——, when defendant came along driving a horse and cart. The superintendent told one of the constables to stop the cart, which he did. The constable asked defendant if he had got any eggs, and defendant admitted he had. Defendant produced a large hamper, which was opened by the side of the road. This contained 117 pheasants' eggs and 309 partridges' eggs—426 in all. Defendant, on being asked to account for them, said he got them off his land at L——, over which he had the right of shooting. The superintendent immediately proceeded to test some of the eggs, and found one marked with the letters "D.M.S." He asked defendant how he accounted for that, and defendant said it must have been put there by some one to

get him into trouble. Defendant also had a smaller hamper, containing forty pheasants' eggs and 151 partridges' eggs, which he said came from B—— at F——. The eggs were taken to the police station at L——, where the other pheasants' eggs were tested, and five more found to be marked "D.M.S." No eggs in the small hamper were found to be marked. A strong point for the prosecution was that defendant said all the eggs in the large hamper came off his own land, so there was no question about purchasing them. The land in defendant's occupation at L—— was all fen land, and the colour of eggs on that land would differ from eggs found on high land, and he would call gamekeepers to prove that nine out of ten of the partridges' eggs found in the large hamper came off high land. His second point was that the number of eggs found in the large hamper could not have come off defendant's land, as at that time of year there would not be anything like the quantity on his land, which he would also call witnesses to prove. The third point was the label found in the hamper, which had the address of J. R—— Brewery, L——, upon it. The case went further, as six of the pheasants' eggs were found marked with the letters "D.M.S.," which were the initials of a certain keeper on the F—— Estate, who would tell them that he marked one egg in each nest he came across. He marked them with a kind of invisible pencil, so that any one looking at the egg would not notice it, but when washed with a certain preparation the letters would show plainly. One of the six marked eggs had, in addition to the initials, two crosses, and S——, the keeper, would state that he marked this particular egg on Sunday, the 14th May, on the farm at L——; and also that between the 11th and 15th of May he lost seven partridges' and five pheasants' nests. The explanation given by defendant as to the marked egg was that someone must have put it amongst his out of spite, but as no one knew of the eggs being marked except S——, it followed that unless he did so no one

else could. S—— had no reason to do so; indeed his land was a great distance from that over which defendant had the right of shooting. S—— only marked one egg in each nest, and each marked egg represented a whole nest, containing on an average from ten to twelve eggs. If the magistrates came to the conclusion that the marked eggs belonged to L—— I——, they would doubtless come to the same conclusion with regard to the others. The penalty was a large one, and if they considered the facts proved, he submitted that a heavy penalty should be inflicted.

The following evidence was then taken :—

Superintendent H—— said: On the 15th May I was with police constables P—— and B—— on the U—— Road in the direction of L——, when I saw defendant driving towards us. I instructed P—— to stop the cart. P—— asked defendant if he had got some eggs. Defendant said, "Yes, and plenty more at home". P—— took the hamper from the cart, and it was opened in my presence. It contained 117 pheasants' eggs and 309 partridges' eggs. I took out three or four pheasants' eggs and tried them with the bottle of solution I had in my pocket. One of them was marked with the initials "D.M.S.," and I called defendant's attention to it. He said: "They all came off my land. If one of them is marked, some one must have put it there out of spite. I cannot stop now, and will leave them with you." That was after the second hamper had been taken from the cart, and defendant then drove off. Before I put the solution on the eggs, I could not see the mark. I took all the eggs to the L—— Police Station. When we got there I tested all the pheasants' eggs, and found six of them marked "D.M.S." These were all taken from the large hamper. (The eggs from both the hampers were produced in court and examined by magistrates and counsel.) Cross-examined. — Defendant is a game-dealer, and holds a license. I know defendant occupies a quantity of land at L——. There is a lot

of game about there. I do not know where the defendant's land is. It was about half a mile from L—— where we stopped the defendant. Defendant could see us on the road. He stopped at once. There was no concealment on defendant's part of the hampers, which were at the bottom of the cart. One hamper (large) had 426 eggs, and the other (small) had 191 eggs. I found no marked eggs in the small one. The large hamper contained both pheasants' and partridges' eggs. I found none of the latter marked. There were 117 pheasants' eggs in the large hamper, and it was only amongst them that I found any marked. S—— told me that he marked the eggs. I only found one marked egg when defendant was there. When we found the other marked eggs there were only two constables with me. I got the solution from my chief-constable. The solution does not spoil the eggs for hatching. On the 18th May I received a letter from defendant's solicitors asking for immediate return of the eggs. Defendant told me he got the eggs in the small hamper from Mr. B——, who occupies land at F——. I have found that such statement is true. The label (produced) was at the top of the hamper. Re-examined. — Defendant told me that the small hamper came from F——. He has not got a farm at L——, but only hires shooting.

Police constable P—— gave corroborative evidence.

Daniel M—— S——, a gamekeeper, said: I am keeper in charge of a portion of L—— I——'s estate. In consequence of eggs being stolen, I marked some eggs—one in each nest—both pheasants and partridges. I put my initials "D. M. S." on the eggs with a pencil. (At this stage witness marked an egg with the specially prepared pencil, his initials, "D. M. S.," being practically invisible until the solution was put on, when the writing could be plainly seen.) Continuing, witness said: I marked one egg in each nest I came across on the C—— Farm, L——, and E—— Farm, E——. I marked one egg particu-

larly with my initials and two crosses on Sunday, the 14th May, and put it in a new-made nest on C—— Farm. I looked into that nest on Monday, the 15th May, and the egg so marked was gone. There would be from ten to fifteen eggs in each nest about that time of year. I lost five pheasants' nests and seven partridges' nests between the 11th and 15th of May—nests that I knew of. I never told any one that I marked the eggs, not even the keepers on the beat. Partridges' eggs differ in colour when laid on high land and fen land. Witness was asked to select eggs showing this difference, and did so. Cross-examined.—The stain of the fen land alters the colour of the eggs. The bird finds a dry place for the nest, but it tramples on the eggs. I marked one egg in each of a number of nests on the E—— and C—— Farms. I can only tell for certain when I marked the egg which has the initials and two crosses. That was on the 14th May. I can swear I marked the other five eggs. The egg with the crosses must have got from the nest to the defendant's cart within twenty-four hours. L—— I——'s C—— Farm is in L——. I always keep on my own land, and never trespass on other people's. I am not the only keeper who uses the particular pencil for marking eggs. I have lost a number of eggs. Re-examined.—I made a complaint of the loss of eggs to the head keeper. I did not know defendant. The initials on the eggs found marked are in my writing.

F. R——, head keeper, said: I know the shooting hired by defendant, which is in J——'s Fen. There are about 700 acres, but there are no woods near it. My employer has some fen land which adjoins defendants, and is of the same character. I look after the game there, and I know the amount of game found on such land. I should only expect to find five or six pheasants laying on the quantity of land defendant hires, with an average of ten or twelve eggs in each nest. I should not expect to find more than twelve or fifteen brace of partridges on defendant's land, with

an average of twelve to fourteen eggs. I know the E—— estate and C—— Farm. Neither of these adjoin the defendant's land, but are some miles off. I am used to partridges' eggs, and can tell the difference between eggs laid on high land and on fen land. The fen eggs would be darker and stained by the fen soil. More than half the eggs produced are high land eggs. I produce some eggs picked up on high land and fen land. Cross-examined.—The eggs brought by me are specimens. Our land goes right up to defendant's. It is best to let pheasants lay their full number of eggs before taking any. Re-examined.—Defendant has no high land in L—— so far as I know. In a wet season the fen eggs would get more stained, but there would be a difference in the colour even in a dry season.

F—— H——, under keeper, to S—— W——, likewise gave evidence, and E—— B——, head keeper to another landowner, was also called to prove the difference in the colour of eggs on high land and fen or marsh land.

C—— O—— said he was the inventor of the pencil with which the eggs were marked. The mark could not be brought out without the solution. In cross-examination, when the witness was asked as to the composition of the solution, he objected to give information on the point. Counsel submitted that he was entitled to have his question answered, but after some discussion the magistrates ruled that it was not necessary for the purpose of the present case.

On resuming after lunch, counsel asked permission to call his witnesses before addressing the bench, and this was agreed to. The defendant said: I live at M——, and am a game-dealer. I have a license, and have had one for twelve years. I occupy shooting at L——, about 700 acres. It is fen land, but there is a bank round it, and the main line of the G.E.R. runs through it. I have about 100 acres of land at M——, 300 acres at C——, and some at B—— R——. On Monday, the 15th May, I had been to F——. I went there for some

eggs, and got some from Mr. B——, about 200. These were the eggs I had in my cart in one of the hampers. I went from F—— to L——, about six miles. I called at a public-house there, which is kept by J. R——. I had a glass of beer and met my man C—— there. He brought me some eggs, between 400 and 500. I could not say the number exactly. They were in a flat. My man brought three lots of eggs collected on Friday, Saturday and Monday. I put some feathers, papers, etc., with the eggs. I put the flat into my cart and started. I had two hampers and some chickens. One hamper contained the eggs I picked up at the public-house, and the other eggs I had from F——. Except the eggs I bought from Mr. B——, I had no eggs which I bought from any one else. Some of the eggs I had in the large hamper were marked. I did not know that I had any eggs unlawfully taken from anywhere. I was stopped by Supt. H—— and two police constables. P—— said: "I suspect you of having game eggs in your possession". I said: "I always have some eggs at this time of the year". P—— said he wanted them, and I handed the hampers to him. I did not tell the policeman I had plenty of eggs at home. Cross-examined.—I do not take eggs from the public-house very often. I had had one little lot from there before. I shoot on my land. I do not know how many birds nest on my land. I expected to find as many eggs as I had on my land. I had had some off my land once before, but I could not say how many. It is all fen land except the bank. I do not believe any man can tell between an egg on the fen land and others. I do not suggest that these eggs came from any of my other land. I called at the public-house on Monday. Mr. A—— is the manager, and he has been in trouble once or twice in game matters. I gave my man C—— orders to collect the eggs off my land, and I went over there to fetch them. I saw my man C—— at the public-house, but I did not ask him where he got the eggs. I leave it to C——, and tell him to get all he can, and do not ask him any

further questions. The eggs were backed up at the top, and that is how the label got there. I never saw the mark on the egg, and was not asked to explain anything about it. I said: "If there is a mark upon it, it was put there by some one else". As soon as P—— saw the mark he said, "This is one of them," and took the hampers. I said: "If there are any marked eggs there they were put upon my land by some evil-disposed person". I know the gamekeeper S——, and I know C—— Farm, which is about three miles from my land. I gave B—— 4½d. each for the eggs I bought at F——. Very early in the season they make more money. In the middle of May I was getting about 6d. each for partridges' eggs and 9d. each for pheasants' eggs. By the Bench.—I pay £11 10s. for the shooting on the 700 acres of land at L——. C—— is not paid wages. He is paid according to the number of eggs.

C—— C——, of L——, stated that defendant had about 650 acres of land there. During the egging season he collected the eggs for defendant. L—— was a good country for game and eggs. Witness collected the eggs before the 15th May, on the Thursday, Friday and Saturday. He collected 420 and took them to the public-house, where he put them in a hamper. Witness kept the eggs at his house until he took them to the public-house. Defendant had not come before the 15th May to take any eggs from witness, who said he was paid 30s. at the end of the season for collecting eggs. Cross-examined.—These are the first eggs I have collected for defendant this year. There are two other men who live on the land, and it is their duty to show me the nests. If any one had taken 100 or 200 eggs off defendant's land I should have known it. Defendant told me to collect the eggs on Thursday, Friday and Saturday, and get them ready for Monday. I collected 420 odd eggs. I am not aware that any of the eggs were marked. All the eggs I picked up came from defendant's land. I cannot ac-

count in any way for the eggs marked by the keeper being amongst them.

By the Bench.—I do not keep count of the number of nests.

A poultry-dealer said he and Mr. B—— hired shooting over 800 acres of land. On the 15th May defendant went over and met him at Mr. B——'s house. Witness sold him some pheasants and partridges' eggs—about 200. He gave witness 4½d. each for them. All those eggs came from the land which witness and Mr. B—— had the right of shooting over. Cross-examined.—We pay several different people for the shooting. B—— hires the shooting, and I go in with him. Defendant paid me for the eggs. I could not say how much he paid me. He paid me in gold. I spoke to Mr. B—— about it. I shared the money with him, but I cannot say how much I gave him. I counted the eggs before I sold them. There were about 200. I have sold some to defendant before this season.

By the Bench.—Do you mean to say you do not know how much was paid you for the eggs?

Witness gave an evasive answer, and was told by the chairman that the magistrates did not believe him.

Re-examined.—We got 3¼d. each for partridges' eggs and 4½d. for pheasants' eggs.

A—— B——, of F——, also gave evidence as to hiring shooting in conjunction with the last witness, and A——, who was with defendant in the cart when stopped by the police, said defendant told him to hand out the hampers containing the eggs, and that the hampers came from F—— and L——. He saw the police smear some stuff on some of the eggs, and heard them say there was a mark on one of them, but he did not see it.

Counsel for defendant, addressing the magistrates, said the case was an exceedingly important matter for the defendant, who had been a game-dealer for some ten or twelve years, and a man could not carry on that trade without a good character. The defendant had hitherto

carried on his business without suspicion. Defendant was summoned under section 24 of the Game Act of 1831, which he again read. It would be for the bench to say whether the prosecution had proved that defendant had in his possession eggs wrongfully obtained, and that he had those eggs knowing them to have been improperly obtained. The question was—Had the prosecution shown that defendant had a guilty knowledge? If any one had stolen goods or goods unlawfully obtained, they took precautions to convey them secretly, but defendant went in broad daylight to places where he was known, and when stopped by the police he made no secret about the eggs. He (counsel) submitted that the whole of defendant's proceedings showed that he was an innocent man. Referring to the marked eggs, he said they all knew many eggs were stolen and handed about, and it might be that whilst the eggs were at the public-house some one put the marked eggs amongst those belonging to defendant. The label showed nothing, as it was merely taken up with the paper and other things to cover the eggs and prevent their being broken. Defendant gave his evidence in a fair way. They knew he got the eggs at F——, as stated, and there were no marked ones amongst them, so they had only the other hamper to deal with. Even if there were in the L—— hamper eggs improperly obtained, it must be shown that defendant knowingly had such eggs. He submitted that the prosecution had not shown that defendant knew he had eggs unlawfully obtained, and that he had further proved that defendant was innocent.

After retiring to consider the matter, the chairman said the magistrates had gone carefully into the case, and were unanimous that the charge was made out so far as the 426 eggs in the L—— hamper were concerned. The bench were of opinion that the 191 eggs in the other hamper were obtained legally. They had decided to convict as to the 426 eggs, and imposed a fine of 2s. per egg —£42 12s., with ordinary costs, or one month.

It transpired that there were fourteen convictions

recorded against defendant, eleven of which were for offences under the game laws.

Formal notice of appeal was given on behalf of the defendant, but the penalty and costs were afterwards paid and the appeal abandoned.

THE LEASING, ETC., OF SPORTING RIGHTS.

These interests with the accompanying right to take away the game acquired, coming as they do within the Statutes of Frauds, being an interest arising out of land, and a profit *a prendre*, must be in writing and signed, and whether the document purporting to pass the interest be an agreement or a lease it must be under seal, *i.e.*, by deed.

It must not of course be understood that all agreements for the hiring of sporting rights not under seal are necessarily void, as against all parties interested under the document, as sometimes acts done or committed by a person against whom it is proposed to bring an action, would probably bring such person within the provisions of the agreement.

Below will be found a short form of lease of sporting rights which may be useful to sportsmen generally about to hire or let a comparatively small shooting. In large shootings many other matters would necessarily have to be dealt with and a plan of fields, etc., annexed to the lease, but the following will probably be found sufficient for most of an ordinary nature. Of course it is presumed that a person about to hire such rights from the owner of the land, with a tenant in occupation, would naturally satisfy himself that the person purporting to let has the right vested in him, likewise, when thinking of hiring from a tenant, that such tenant has the right to the game as well as to the ground game, and that the game is not reserved to the landlord.

This indenture made the day of , 19 , between A B, of (address and occupation), hereinafter called the

lessor of the one part, and C D, of (address and occupation), hereinafter called the lessee of the other part, witnesseth as follows:—

The lessor doth by these presents grant and demise unto the said lessee the full and exclusive right (subject only to the concurrent right of occupiers under the Ground Game Act of 1880) for the said lessee, his friends, gamekeepers, and all other persons having his permission to hunt, course, shoot, fish and sport over and upon the lands and grounds specified in the schedule hereto in the parishes of in the county of and to kill, take and dispose of and of turning down and preserving all game, woodcocks, snipe, quails, landrails and conies, wild fowl and other wild animals and wild birds and fish upon the said premises, and for the purpose aforesaid, to enter thereon, to hold the said rights and liberties hereby granted, subject as hereinafter provided unto the lessee from the day of unto the day of , 19 , paying unto the said lessor the rent or sum of £ by equal half-yearly payments on the day of and the day of in each year, without deduction, the first payment to be made on the day of next.

The lessee covenants with the lessor to pay the said rent of £ at the time and in manner aforesaid and to pay all rents and taxes levied upon the right of sporting hereby granted.

And also that he will exercise the said right of sporting in a proper and sportsmanlike manner, and will during the said term keep gamekeepers and assistants and will use his best endeavours to preserve a proper and efficient head of game.

And also that he will during the said term pay all reasonable claims to the tenants or occupiers of the said lands for damage done in the exercise of the said sporting rights or by game on the said lands and will keep the said lessor indemnified from any such claims.

And also that he will keep down the number of hares

and rabbits on the said lands so as to prevent injury by them to the crops and to the woods on the said lands.

And also will not at any time during the said term assign or underlet the said sporting rights without the previous consent in writing of the said lessor first had and obtained.

And will at the end or sooner determination of the said term leave upon the said lands at least head of cock pheasants and of hen pheasants.

And the said lessor hereby covenants with the said lessee that the lessee paying the said rent hereby reserved and observing and performing the covenants on his part hereinbefore contained shall quietly enjoy the several rights and liberties hereby granted without any interruption by the said lessee or any persons claiming under or in trust for him.

And it is hereby mutually agreed and declared that if the said rent or any part thereof shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, or if the lessee shall commit any breach of the covenants hereinbefore contained, the lessor may by notice in writing forthwith determine the lease hereby created without prejudice to his right of action for such breach.

And it is hereby further agreed that any dispute or question which may arise under these presents shall be referred to an arbitrator, or in the case of the parties hereto being unable to agree then to two arbitrators, one to be appointed by either party, and their umpire, whose decision shall be final.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first within written.

The Schedule above referred to.

(Here will follow a description of the lands over which the sporting rights are to be granted.)

A B (L. S.)
C D (L. S.)

Signed, sealed and delivered by the within-named A B, in the presence of
Witness' name.
Address.
Occupation.

Signed, sealed and delivered by the within-named C D, in the presence of
Witness' name.
Address.
Occupation.

The lease must be properly stamped within one month of its execution and date (if not previously stamped), and must bear the stamp required according to the value of the rent.

THE GAME ACT, 1831.

(1 & 2 Wm. IV. c. 32.)

An Act to amend the laws in England relative to Game. (5th October, 1831.)

Whereas it is expedient to repeal the following statutes in that part of the United Kingdom called England, relative to game, and to substitute other provisions in lieu thereof; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that so much of a Statute made in the thirteenth year of the reign of King Richard the Second as relates to such persons as shall not have or keep any greyhound, hound, or other dog to hunt, and shall not use fyrets, heys, nets, harepipes, cords or other engines to take or destroy hares, conies, or other gentlemen's game; and so much of a Statute made in the twenty-

second year of the reign of King Edward the Fourth as relates to the having any mark or game of swans; and an Act passed in the eleventh year of the reign of King Henry the Seventh, intituled An Act against taking of Feasaunts and Partridges; and an Act passed in the nineteenth year of the same reign, intituled *De Laqueis et Retibus Venantium*; and an Act passed in the fourteenth and fifteenth years of the reign of King Henry the Eighth, intituled An Act against tracing of Hares; and an Act passed in the twenty-fifth year of the same reign, intituled An Act against Destruction of Wild Fowl; and an Act passed in the thirty-third year of the same reign, intituled An Act concerning Cross Bows and Hand Guns; and an Act passed in the twenty-third year of the reign of Queen Elizabeth, intituled An Act for the Preservation of Pheasants and Partridges; and an Act passed in the second year of the reign of King James the First, intituled An Act for the better Execution of the Intent and Meaning of former Statutes made against shooting in Guns, and for the Preservation of the Game of Pheasants and Partridges, and against the destroying of Hares with Hare Pipes, and tracing Hares in the Snow; and an Act passed in the seventh year of the same reign, intituled An Act to prevent the Spoil of Corn and Grain by untimely hawking, and for the better Preservation of Pheasants and Partridges; and an Act passed in the twenty-second and twenty-third years of the reign of King Charles the Second, intituled An Act for the better Preservation of the Game, and for securing Warrens not inclosed, and the several Fishings of this Realm; and an Act passed in the fourth year of the reign of King William and Queen Mary, intituled An Act for the more easy Discovery and Conviction of such as shall destroy the Game of this Kingdom; and an Act passed in the fifth year of the reign of Queen Anne, intituled An Act for the better Preservation of the Game; and an Act passed in the ninth year of the same reign, intituled An Act for making the Act of the Fifth Year of Her Majesty's

Reign, for the better Preservation of the Game, perpetual, and for making the same more effectual; and an Act passed in the eighth year of the reign of King George the First, intituled An Act for the better Recovery of the Penalties inflicted upon Persons who destroy the Game; and an Act passed in the tenth year of the reign of King George the Second, intituled An Act for continuing an Act for the more effectual punishing wicked and evil-disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and Properties of His Majesty's Subjects, and for the more speedy bringing the Offenders to Justice; and for continuing Two Clauses, to prevent the cutting or breaking down the Bank of any River or Sea Bank, and to prevent the malicious cutting of Hopbinds, contained in an Act passed in the Sixth Year of His present Majesty's Reign; and for the more effectual Punishment of Persons removing any Materials used for securing Marsh or Sea Walls or Banks, and of Persons maliciously setting on Fire any Mine, Pit, or Delph of Coal or Cannel Coal, and of Persons unlawfully hunting or taking any Red or Fallow Deer in Forests or Chases, or beating or wounding Keepers or other Officers in Forests, Chases, or Parks; and for more effectually securing the Breed of Wild Fowl; and an Act passed in the twenty-sixth year of the same reign, intituled An Act to amend an Act made in the Eighth Year of the Reign of His late Majesty King George the First, intituled "An Act for the better Recovery of the Penalties inflicted upon Persons who destroy the Game," by enlarging the Time within which Suits and Actions are to be brought by force of the said Act; and an Act passed in the twenty-eighth year of the reign of King George the Second, intituled An Act to explain and amend a Clause in an Act made in the Fifth Year of the Reign of Queen Anne, intituled "An Act for the better Preservation of the Game," in relation to the selling or offering to sale any Game; and an Act passed in the second year of the reign of King George the Third, intituled An Act

for the better Preservation of the Game in that Part of Great Britain called England; and an Act passed in the thirteenth year of the same reign, intituled An Act to explain and amend the several Laws now in being, so far as the same relate to the Preservation of the Moor or Hill Game; and an Act passed in the same year of the same reign, intituled An Act to repeal an Act made in the Tenth Year of the Reign of His present Majesty, intituled "An Act for the better Preservation of the Game within that Part of Great Britain called England," and for making other Provisions in lieu thereof; and an Act passed in the thirty-ninth year of the same reign, intituled An Act for repealing Two Acts passed in the Thirty-sixth Year of the Reign of His present Majesty, which limit the Time for killing Partridges in England and Scotland, and for amending so much of an Act passed in the Second Year of the Reign of His present Majesty as relates to such Limitation within that Part of Great Britain called England, by making other Provisions for that Purpose; and an Act passed in the forty-third year of the same reign, intituled An Act for the better Preservation of Heath Fowl, commonly called Black Game, in the New Forest, in the County of Southampton; and an Act passed in the forty-eighth year of the same reign, intituled An Act to repeal so much of an Act of the First Year of King James the First as relates to the Penalties on shooting at Hares; and also to repeal an Act of the Third Year of King George the First, relating to Gamekeepers; and an Act passed in the fiftieth year of the reign of King George the Third, intituled An Act for the better Preservation of Heath Fowl, commonly called Black Game, in the Counties of Somerset and Devon; and an Act passed in the fifty-eighth year of the same reign, intituled An Act for the more effectual Prevention of Offences connected with the unlawful Destruction and Sale of Game; and an Act passed in the fifty-ninth year of the same reign, intituled An Act for the further regulating the Appointment of Gamekeepers in Wales;

and all Acts continuing or perpetuating any of the Acts or parts of Acts hereinbefore referred to, so far only as relates to the continuing or perpetuating the same respectively; shall be and continue in force until and throughout the thirty-first day of October in the present year; and shall from and after that Day, as to that part of the United Kingdom called England, be repealed, (except so far as any of the said Acts may repeal the whole or any part of any other Acts, and except as to any offences which may have been committed against any of the said Acts before or upon the said thirty-first day, and as to any penalties which may have been incurred thereunder before or upon the said thirty-first day, which offences shall be dealt with and punished, and the penalties recovered, as if this Act had not been made, and except as to any matters done by any persons under the authority of any of the said Acts before or upon the said thirty-first day, with respect to whom every privilege and protection given by any of the said Acts shall continue in force as if this Act had not been made); and this Act shall commence and take effect (except as is hereinafter excepted) on the first day of November in the present year.

II. And be it enacted, That the word "Game" shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game and bustards; and that the words "lord of a manor, lordship or royalty, or reputed manor, lordship or royalty," shall throughout this Act be deemed to include a lady of the same respectively.

III. And be it enacted, That if any person whatsoever shall kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking any game, on a Sunday or Christmas Day, such person shall, on conviction thereof before two Justices of the Peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said Justices shall seem meet,

together with the costs of the conviction; and if any person whatsoever shall kill or take any partridge between the first day of February and the first day of September in any year, or any pheasant between the first day of February and the first day of October in any year, or any black game (except in the county of Somerset or Devon, or in the New Forest in the County of Southampton) between the tenth day of December in any year and the twentieth day of August in the succeeding year, or in the County of Somerset or Devon, or in the New Forest aforesaid, between the tenth day of December in any year and the first day of September in the succeeding year, or any grouse commonly called red game between the tenth day of December in any year and the twelfth day of August in the succeeding year, or any bustard between the first day of March and the first day of September in any year, every such person shall, on conviction of any such offence before two Justices of the Peace, forfeit and pay for every head of game so killed or taken such sum of money, not exceeding one pound, as to the said Justices shall seem meet, together with the costs of the conviction; and if any person, with intent to destroy or injure any game, shall at any time put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway, every such person shall, on conviction thereof before two Justices of the Peace, forfeit and pay such sum of money, not exceeding ten pounds, as to the said Justices shall seem meet, together with the costs of the conviction.

IV. And be it enacted, That if any person licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid;

or if any person, not being licensed to deal in game by virtue of this Act as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession or control any bird of game (except birds of game kept in a mew or breeding-place) after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall, on conviction of any such offence before two Justices of the Peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession or control, such sum of money, not exceeding one pound, as to the convicting Justices shall seem meet, together with the costs of the conviction.

V. And be it enacted, That nothing in this Act contained shall in anywise affect or alter (except as hereinafter mentioned) any Act or Acts now in force by which any persons using any dog, gun, net or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, are required to obtain and have annual game certificates; but that all persons who before the commencement of this Act were required to obtain and have such certificates shall after the commencement of this Act be required from time to time to obtain and have the like certificates; and all the powers, provisions and penalties contained in such Act or Acts shall continue in as full force and effect as if this Act had not been made; and that all regulations and provisions contained in any Act or Acts relative to game certificates, so far as they relate to gamekeepers of manors, and to the amount of duty for game certificates to be charged upon or in respect of gamekeepers of manors in the cases specified in such Act or Acts,

shall extend and apply to all gamekeepers of lands appointed under this Act as fully and effectually as if they were gamekeepers of manors, and were expressly mentioned in and charged by such Act or Acts.

VI. And be it declared and enacted, That every person who shall have obtained an annual game certificate shall be authorised to kill and take game, subject always to an action, or to such other proceedings as are hereinafter mentioned, for any trespass by him committed in search or pursuit of game: Provided always that no game certificate on which a less duty than three pounds thirteen shillings and sixpence is chargeable under the Acts relating to game certificates shall authorise any gamekeeper to kill or take any game, or to use any dog, gun, net or other engine or instrument for the purpose of killing or taking game, except within the limits included in his appointment as gamekeeper; but that in any case where such gamekeeper shall kill or take any game, or use any dog, gun, net or other engine or instrument for the purpose of killing or taking game, beyond such limits as aforesaid, he may be proceeded against under this Act, or otherwise, in the same manner to all intents and purposes as if he had no game certificate whatsoever.

VII. And be it enacted, That in all cases where any person shall occupy any land under any lease or agreement made previously to the passing of this Act, except in the cases hereinafter next excepted, the lessor or landlord shall have the right of entering upon such land, or of authorising any other person or persons who shall have obtained an annual game certificate to enter upon such land for the purpose of killing or taking the game thereon; and no person occupying any land under any lease or agreement, either for life or for years, made previously to the passing of this Act, shall have the right to kill or take the game on such land, except where the right of killing the game upon such land has been expressly granted or allowed to such

person by such lease or agreement, or except where upon the original granting or renewal of such lease or agreement a fine or fines shall have been taken, or except where in the case of a term for years such lease or agreement shall have been made for a term exceeding twenty-one years.

VIII. Provided always, and be it enacted, that nothing in this Act contained shall authorise any person seised or possessed of or holding any land to kill or take the game, or to permit any other person to kill or take the game upon such land, in any case where, by any deed, grant, lease, or any written or parole demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, landlord or other person whatsoever; nor shall anything in this Act contained defeat or diminish any reservation, exception, covenant or agreement already contained in any private Act of Parliament, deed or other writing relating to the game upon any land, nor in any manner prejudice the rights of any lord or owner of any forest, chase or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, lordship or royalty, or of any steward of the Crown of any manor, lordship, or royalty appertaining to His Majesty.

IX. Provided also, and be it enacted, That nothing in this Act contained shall in any way alter or affect the prerogative, rights, or privileges of His Majesty, his heirs or successors, nor the powers or authorities now vested in the Commissioners of His Majesty's Woods, Forests and Land Revenues, in or relating to any of His Majesty's forests or the boundaries thereof, nor in or relating to the appointment of any stewards, gamekeepers, or other officers of any of His Majesty's forests, parks or chases, or of any hundred, honor, manor, or lordship, being part of the possessions and land revenues of the Crown, nor the rights, privileges, or immunities of any chief-justice in Eyre, or any

warden, deputy warden, or lieutenant of any of His Majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks or chases, or of any person entitled to any right or privilege under them or any of them, nor the rights or privileges of any persons holding under any grants or purchases from the Crown, nor give to any lord of any manor or manors within any forest or the boundaries thereof, nor to any other person whatsoever, any privileges, rights or powers within any such forest, park or chase, or the boundaries thereof, which he did not possess or to which he was not entitled before the passing of this Act, but that all the aforesaid prerogatives, immunities, privileges, rights and powers shall remain as if this Act had not been made.

X. Provided also, and be it enacted, That nothing herein contained shall be deemed to give to any owner of cattlegates or rights of common upon or over any wastes or commons any interest or privilege which such owner was not possessed of before the passing of this Act, nor to authorise such owner of cattlegates or rights of common to pursue or kill the game found on such wastes or commons; and that nothing herein contained shall defeat or diminish the rights or privileges which any lord of any manor, lordship or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to His Majesty, may, before the passing of this Act, have exercised in or over such wastes or commons; and that the lord or steward of the Crown of every manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall have the right to pursue and kill the game upon the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty, and to authorise any other person or persons who shall have obtained an annual game certificate to enter upon such wastes or commons for the purpose of pursuing and killing the game thereon.

XI. And be it enacted, That where the lessor or landlord shall have reserved to himself the right of killing the game upon any land it shall be lawful for him to authorise any other person or persons who shall have obtained an annual game certificate to enter upon such land for the purpose of pursuing and killing game thereon.

XII. And be it enacted, That where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land, or where such exclusive right hath been or shall be specially reserved by or granted to, or doth or shall belong to, the lessor, landlord or any person whatsoever other than the occupier of such land, then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord, or other person having the right of killing the game upon such land, such occupier shall, on conviction thereof before two Justices of the Peace, forfeit and pay for such pursuit such sum of money not exceeding £2, and for every head of game so killed or taken such sum of money not exceeding £1, as to the convicting Justices shall seem meet, together with the costs of the conviction.

XIII. And be it enacted, That it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to His Majesty, by writing under hand and seal, or in case of a body corporate, then under the seal of such body corporate, to appoint one or more person or persons as a gamekeeper or gamekeepers to preserve or kill the game within the limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty, for the use of such lord or steward thereof, and to authorise such gamekeeper or gamekeepers within the said limits to seize and take for the use of such lord or steward all such dogs, nets, and other engines and instruments for the

killing or taking of game as shall be used within the said limits by any person not authorised to kill game for want of a game certificate.

XIV. And be it enacted, That it shall be lawful for any lord of a manor, lordship, or royalty, or reputed manor, lordship, or royalty, or any steward of the Crown of any manor, lordship, or royalty appertaining to His Majesty, to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, lordship, or royalty, or reputed manor, lordship, or royalty, or for such division or district of such manor, lordship, or royalty, as such lord or steward of the Crown shall think fit, and to authorise such person, as gamekeeper, to kill game within the same for his own use or for the use of any other person or persons who may be specified in such appointment or deputation, and also to give to such person all such powers and authorities as may by virtue of this Act be given to any gamekeeper of a manor; and no person so appointed gamekeeper and empowered to kill game for his own use or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the Crown of the manor, lordship, or royalty, or reputed manor, lordship, or royalty, for which such deputation or appointment shall be given, shall be deemed to be or shall be entered or paid for as the gamekeeper or male servant of the lord or steward making such appointment or deputation, anything in any Act or Acts contained to the contrary notwithstanding.

XV. And be it enacted, That it shall be lawful for every person who shall be entitled to kill the game upon any lands in Wales of the clear annual value of five hundred pounds, whereof he shall be seised in fee or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, if such lands shall not be within the bounds of any manor, lordship, or royalty,

or if, being within the same, they shall have been enfranchised or alienated therefrom, to appoint, by writing under his hand and seal, a gamekeeper or gamekeepers to preserve or kill the game over and upon such his lands, and also over and upon the lands in Wales of any other person, who, being entitled to kill the game upon such last-mentioned lands, shall by license in writing authorise him to appoint a gamekeeper or gamekeepers to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, lordship, or royalty, or having been enfranchised or alienated therefrom; and it shall be lawful for the person so appointing a gamekeeper or gamekeepers to authorise him or them to seize and take, for the use of the person so appointing, upon the lands of which he or they shall be appointed gamekeeper or gamekeepers, all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used upon the said lands by any person not authorised to kill game for want of a game certificate.

XVI. Provided always, and be it enacted, That no appointment or deputation of any person as a gamekeeper by virtue of this Act shall be valid unless and until it shall be registered with the clerk of the peace for the county, riding, division, liberty, franchise, city, or town wherein the manor, lordship, or royalty, or reputed manor, lordship, or royalty, or the lands, shall be situate, for or in respect of which such person shall have been appointed gamekeeper; and in case the appointment of any person as gamekeeper shall expire or be revoked, by dismissal or otherwise, all powers and authorities given to him by virtue of this Act shall immediately cease and determine.

XVII. And be it enacted, That every person who shall have obtained an annual game certificate shall have power to sell game to any person licensed to deal in game, according to the provisions hereinafter mentioned: Provided always, that no game certificate on which a less duty than three pounds thirteen shillings

and sixpence is chargeable under the Acts relating to game certificates shall authorise any gamekeeper to sell any game, except on the account and with the written authority of the master whose gamekeeper he is; but that any such gamekeeper selling any game not on the account and with the written authority of such master may be proceeded against under this Act in the same manner, to all intents and purposes, as if he had no game certificate whatsoever.

XVIII. And be it enacted, That the Justices of the Peace of every county, riding, division, liberty, franchise, city, or town shall hold a special session in the division or district for which they usually act, in the present year, between the fifteenth and the thirtieth days of October, and in every succeeding year in the month of July, for the purpose of granting licenses to deal in game, of the holding of which session seven days' notice shall be given to each of the Justices acting for such division or district; and the majority of the Justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorised (if they shall think fit) to grant, under their hands, to any person being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach, or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a license according to the form in the schedule (A) annexed to this Act, empowering the person to whom such license shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep, a

board having thereon in clear and legible characters his Christian name and surname, together with the following words (that is to say), "licensed to deal in game"; and every such license granted in the present year shall begin to be in force on the first day of November in the present year, and shall continue in force until the fifteenth day of July, one thousand eight hundred and thirty-two, and every such license granted in any succeeding year shall continue in force for the period of one year next after the granting thereof.

XIX. And be it enacted, That every person who shall have obtained any license to deal in game under the provisions of this Act shall annually and during the continuance of his license, and before he shall be empowered to deal in game under such license, obtain a certificate according to the form in the schedule (B) annexed to this Act, on payment of the duty of two pounds, which is hereby granted and made payable to His Majesty for every such certificate, which certificate shall be in force for the same period as such license; and the said duty shall be paid to the collector or collectors of the assessed taxes for the parish, township, or place in which the person so licensed shall reside, in like manner as the duties on game certificates are by law payable; and every receipt to be given by any collector receiving such duty shall be free of stamp duty, and shall be delivered to the person requiring the same on payment to the collector of one shilling, and no more, over and above the said duty for the certificate; and such receipt shall be exchanged for a certificate under this Act, in like manner as receipts for the duty in respect of killing game are by law required to be exchanged for game certificates; and if any person obtaining a license under this Act shall purchase or sell or otherwise deal in game, as a licensed dealer under this Act, before he shall obtain a certificate in exchange for a receipt as herein directed, such person shall for every such offence forfeit and pay the penalty of twenty pounds.

XX. And be it enacted, That the collector or collectors of the assessed taxes in every parish, township, or place wherein any person shall reside who shall have obtained such annual license and certificate, shall in each year make out a list, to be kept in his or their possession, containing the name and place of abode of every such person, and shall at all seasonable hours produce such list to any person making verbal application to inspect the same, and shall be entitled to demand and receive for such inspection the sum of one shilling; and the duties hereby granted as aforesaid in respect of certificates to be obtained by persons licensed to deal in game shall be assessed, charged, raised, levied, and collected by the respective Commissioners and Justices of the Peace, and the several other officers acting in the execution of the several Acts relating to the assessed taxes, in the same manner, and under the same rules, regulations, and provisions (except as herein varied), as the duties on game certificates are by the said Acts directed to be assessed, charged, raised, levied, and collected; and that the penalty of twenty pounds hereby imposed shall be sued for, recovered and levied, either in the district in which the offence shall be committed, or in the district in which the offender shall reside, and be applied, in the same manner, and under the same rules, regulations, and provisions, as penalties on persons doing acts without payment of the game duty, or neglecting to obtain game certificates, are by the said Acts directed to be sued for, recovered, levied, and applied, to all intents and purposes whatsoever as if such rules, regulations, and provisions were specially repeated and re-enacted in this Act.

XXI. Provided always, and be it enacted, That persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one license in any one year to authorise them to deal in game at such house, shop, or stall.

XXII. And be it enacted, That if any person licensed

by virtue of this Act to deal in game shall during the period of such license be convicted of any offence whatever against this Act, such license shall thereupon become null and void.

XXIII. And be it enacted, That if any person shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game, such person not being authorised so to do for want of a game certificate, he shall, on conviction thereof before two Justices of the Peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said Justices shall seem meet, together with the costs of the conviction: Provided always, that no person so convicted shall by reason thereof be exempted from any penalty or liability under any statute or statutes relating to game certificates, but that the penalty imposed by this Act shall be deemed to be a cumulative penalty.

XXIV. And be it enacted, That if any person not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest or destroy in the nest upon such land the eggs of any bird of game, or of any swan, wild duck, teal or widgeon, or shall knowingly have in his house, shop, possession, or control any such eggs so taken, every such person shall, on conviction thereof before two Justices of the Peace, forfeit and pay for every egg so taken or destroyed, or so found in his house, shop, possession, or control, such sum of money, not exceeding five shillings, as to the said Justices shall seem meet, together with the costs of the conviction.

XXV. And be it enacted, That if any person not having obtained a game certificate (except such person be licensed to deal in game according to this Act) shall sell or offer for sale any game to any person whatsoever; or if any person authorised to sell game under this Act by virtue of a game certificate shall sell or offer for sale any game to any person whatsoever, except a person licensed to deal in game according to this Act; every

such offender shall, on conviction of any such offence before two Justices of the Peace, forfeit and pay for every head of game so sold or offered for sale such sum of money, not exceeding two pounds, as to the said Justices shall seem meet, together with the costs of the conviction.

XXVI. Provided always, and be it further enacted, That it shall be lawful for any innkeeper or tavern-keeper, without any such license for dealing in game as aforesaid, to sell game for consumption in his own house, such game having been procured from some person licensed to deal in game by virtue of this Act, and not otherwise.

XXVII. And be it enacted, That if any person, not being licensed to deal in game according to this Act, shall buy any game from any person whatsoever, except from a person licensed to deal in game according to this Act, or *bonâ fide* from a person affixing to the outside of the front of his house, shop, or stall, a board purporting to be the board of a person licensed to deal in game, every such offender shall, on conviction thereof before two Justices of the Peace, forfeit and pay for every head of game so bought such sum of money, not exceeding five pounds, as to the said Justices shall seem meet, together with the costs of the conviction.

XXVIII. And be it enacted, That if any person being licensed to deal in game according to this Act shall buy or obtain any game from any person not authorised to sell game for want of a game certificate, or for want of a license to deal in game; or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop or stall, without such board as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall, at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game, at any place other than his house, shop, or stall where such board shall have been affixed; or if any person not being licensed

to deal in game according to this Act shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two Justices of the Peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said Justices shall seem meet, together with the costs of the conviction.

XXIX. Provided always, and be it enacted, That the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in every case where the same would have been lawful if transacted by such licensed dealer himself: Provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.

XXX. And whereas, after the commencement of this Act, game will become an article which may be legally bought and sold, and it is therefore just and reasonable to provide some more summary means than now by law exist for protecting the same from trespassers; be it therefore enacted, That if any person whatsoever shall commit any trespass by entering or being, in the daytime, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, such person shall, on conviction thereof before a Justice of the Peace, forfeit and pay such sum of money, not exceeding two pounds, as to the Justice shall seem meet, together with the costs of the conviction; and that if any persons to the number of five or more together shall commit any trespass, by entering or being, in the daytime, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails or conies, each of such persons shall, on conviction thereof before a Justice of the Peace, forfeit and pay such sum of money, not exceeding five

pounds, as to the said Justice shall seem meet, together with the costs of the conviction : Provided always, that any person charged with any such trespass shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass; save and except that the leave and license of the occupier of the land so trespassed upon shall not be a sufficient defence in any case where the landlord, lessor or other person shall have the right of killing the game upon such land by virtue of any reservation or otherwise, or herein-before mentioned; but such landlord, lessor or other person shall, for the purpose of prosecuting for each of the two offences herein last before mentioned, be deemed to be the legal occupier of such land, whenever the actual occupier thereof shall have given such leave or license ; and that the lord or steward of the Crown of any manor, lordship or royalty, or reputed manor, lordship or royalty, shall be deemed to be the legal occupier of the land of the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty.

XXXI. And be it enacted, That where any person shall be found on any land, or upon any of His Majesty's forests, parks, chases or warrens, in the daytime, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, by virtue of any reservation or otherwise as herein-before mentioned, or for the occupier of the land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any person authorised by either of them, or for the warden, ranger, verderer, forester, master, keeper, under-keeper, or other officer of such forest, park, chase, or warren, to require the person so found forthwith to quit the land whereon he shall be so found, and also to tell his Christian name, surname, and place of abode; and in case such person shall, after being so required, offend by refusing to tell his real name or

place of abode, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed as soon as conveniently may be before a Justice of the Peace; and such offender (whether so apprehended or not), upon being convicted of any such offence before a Justice of the Peace, shall forfeit and pay such sum of money, not exceeding five pounds, as to the convicting Justice shall seem meet, together with the costs of the conviction: Provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than twelve hours from the time of his apprehension until he shall be brought before some Justice of the Peace; and that if he cannot, on account of the absence or distance of the residence of any such Justice of the Peace, or owing to any other reasonable cause, be brought before a Justice of the Peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions hereinafter mentioned, as if no such apprehension had taken place.

XXXII. And be it enacted, That where any persons, to the number of five or more together, shall be found on any land, or in any of His Majesty's forests, parks, chases or warrens, in the daytime, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, any of such persons being then and there armed with a gun, and such persons or any of them shall then and there, by violence, intimidation, or menace, prevent or endeavour to prevent any person authorised as hereinbefore mentioned from approaching such persons so found, or any of them, for the purpose of requiring them or any of them to quit the land whereon they shall be so found, or to tell their or his Christian name,

surname, or place of abode respectively, as hereinbefore mentioned, every person so offending by such violence, intimidation or menace as aforesaid, and every person then and there aiding or abetting such offender, shall, upon being convicted thereof before two Justices of the Peace, forfeit and pay for every such offence such penalty, not exceeding five pounds, as to the convicting Justices shall seem meet, together with the costs of the conviction; which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this Act.

XXXIII. And be it enacted, That if any person whatsoever shall commit any trespass, by entering or being, in the daytime, upon any of His Majesty's forests, parks, chases, or warrens, in search or pursuit of game, without being first duly authorised so to do, such person shall, on conviction thereof before a Justice of the Peace, forfeit and pay such sum of money, not exceeding two pounds, as to the Justice shall seem meet, together with the costs of the conviction.

XXXIV. And be it enacted, That for the purposes of this Act the daytime shall be deemed to commence at the beginning of the last hour before sunrise, and to conclude at the expiration of the first hour after sunset.

XXXV. Provided always and be it enacted, That the aforesaid provisions against trespassers and persons found on any land shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare, or fox already started upon any other land, nor to any person *bonâ fide* claiming and exercising any right or reputed right of free warren or free chase, nor to any gamekeeper lawfully appointed within the limits of any free warren or free chase, nor to any lord or any steward of the Crown of any manor, lordship or royalty, or reputed manor, lordship or royalty, nor to any gamekeeper lawfully appointed by such lord or steward within the

limits of such manor, lordship, or royalty, or reputed manor, lordship, or royalty.

XXXVI. And be it enacted, That when any person shall be found by day or by night upon any land, or in any of His Majesty's forests, parks, chases, or warrens, in search or pursuit of game, and shall then and there have in his possession any game which shall appear to have been recently killed, it shall be lawful for any person having the right of killing the game upon such land, by virtue of any reservation or otherwise, as hereinbefore mentioned, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise), or for any gamekeeper or servant of either of them, or for any officer as aforesaid of such forest, park, chase, or warren, or for any person acting by the order and in aid of any of the said several persons, to demand from the person so found such game in his possession, and in case such person shall not immediately deliver up such game, to seize and take the same from him, for the use of the person entitled to the game upon such land, forest, park, chase or warren.

XXXVII. And be it enacted, That every penalty and forfeiture for any offence against this Act (the application of which has not been already provided for) shall be paid to some one of the overseers of the poor, or to some other officer (as the convicting Justice or Justices may direct) of the parish, township or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid.

XXXVIII. And be it enacted, That the Justice or Justices of the Peace by whom any person shall be summarily convicted and adjudged to pay any sum of money

for any offence against this Act, together with costs, may adjudge that such person shall pay the same either immediately or within such period as the said Justice or Justices shall think fit, and that in default of payment at the time appointed such person shall be imprisoned in the common jail or house of correction (with or without hard labour), as to the Justice or Justices shall seem meet, for any term not exceeding two calendar months, where the amount to be paid, exclusive of costs, shall not amount to five pounds, and for any term not exceeding three calendar months in any other case, the imprisonment to cease in each of the cases aforesaid upon payment of the amount and costs.

XXXIX. And be it enacted, That the Justice or Justices of the Peace (as the case may require) before whom any person shall be summarily convicted of any offence against this Act may cause the conviction to be drawn up according to the following form of words, or in any other form of words to the same or the like effect (that is to say) :—

"To wit } Be it remembered, That on the day of in the year of our Lord at in the county of [or riding, division, franchise, liberty, city, etc., as the case may be], A. O. is convicted before me, J. P., one [or us, J. P. and J. J. P., two, as the case may require] of His Majesty's Justices of the Peace for the said county [or riding, etc.], for that he the said A. O. did, on at kill [or take] game [or did use a dog, etc., for the purpose of killing game], he the said A. O. not being authorised so to do for want of a game certificate, contrary to the statute in such case made and provided [or did, here specify any other offence, and the time and place when and where the same was committed, as the case may be] ; and I [or we] do adjudge that the said A. O. shall for the said offence forfeit the sum of

[or we do adjudge that the said A. O. shall for the said offence forfeit the sum of being after the rate of for every head of game so, etc., or for

every egg so, etc.], and shall forthwith pay the said sum, together with the sum of for costs; and that in default of immediate payment of the said sums, he the said A. O. shall be imprisoned [or imprisoned and kept to hard labour] in the of for the space of [unless the said sums shall be sooner paid]; and I [or we] order that the said sums shall be paid by the said A. O. on or before the day of and in default of payment on or before that day I [or we] adjudge the said A. O. to be imprisoned [or imprisoned and kept to hard labour] in the of for the space of [unless the said sums shall be sooner paid]; and I [or we] direct that the said sum of (*i.e.*, the penalty) shall be paid to being one of the overseers of the poor of, etc., to be by him applied according to the directions of the statute in such case made and provided; and I [or we] order that the said sum of for costs shall be paid to (the complainant). Given under my hand [or our hands] the day and year first above mentioned.

"J. P.
"[or J. P. and J. J. P.]"

XL. And be it enacted, That it shall be lawful for any Justice of the Peace to issue his summons requiring any person to appear before himself, or any one or two Justices of the Peace, as the case may require, for the purpose of giving evidence touching any offence against this Act: and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the Justice or Justices then and there present, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the Justice or Justices then and there present, every person so offending shall, on conviction thereof before the said Justice or Justices, or any other Justice or Justices of the Peace, forfeit and pay

such sum of money, not exceeding five pounds, as to the convicting Justice or Justices shall seem meet.

XLI. And be it enacted, That the prosecution for every offence punishable upon summary conviction by virtue of this Act shall be commenced within three calendar months after the commission of the offence; and that where any person shall be charged on the oath of a credible witness with any such offence before a Justice of the Peace, the Justice may summon the party charged to appear before himself, or any one or two Justices of the Peace, as the case may require, at a time and place to be named in such summons; and if such party shall not appear accordingly, then (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate) the Justice or Justices may either proceed to hear and determine the case in the absence of the party, or may issue his or their warrant for apprehending and bringing such party before him or them, as the case may be; or the Justice before whom the charge shall be made may, if he shall have reason to suspect from information upon oath that the party is likely to abscond, issue such warrant in the first instance, without any previous summons.

XLII. And be it declared and enacted, That it shall not be necessary, in any proceeding against any person under this Act, to negative by evidence any certificate, license, consent, authority, or other matter of exception or defence; but that the party seeking to avail himself of any such certificate, license, consent, authority, or other matter of exception or defence, shall be bound to prove the same.

XLIII. And be it enacted, That the Justice or Justices of the Peace before whom any person shall be convicted of any offence punishable upon summary conviction under this Act shall transmit every such conviction to the next court of general or quarter sessions of the Peace

for the county, riding, division, liberty, franchise, city, or town wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court.

XLIV. And be it enacted, That any person who shall think himself aggrieved by any summary conviction in pursuance of this Act may appeal to the Justices at the next general or quarter sessions of the Peace to be holden, not less than twelve days after such conviction, for the county, riding, division, liberty, franchise, city, or town wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognisance, with a sufficient surety, before a Justice of the Peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognisance being entered into, the Justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

XLV. And be it enacted, That no summary conviction in pursuance of this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of His Majesty's superior courts of record; and that no war-

rant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same.

XLVI. Provided always, and be it enacted, That nothing in this Act contained shall prevent any person from proceeding by way of civil action to recover damages in respect of any trespass upon his land, whether committed in pursuit of game or otherwise, save and except that where any proceedings shall have been instituted under the provisions of this Act against any person for or in respect of any trespass, no action at law shall be maintainable for the same trespass by any person at whose instance or with whose concurrence or assent such proceedings shall have been instituted, but that such proceedings shall in such case be a bar to any such action, and may be given in evidence under the general issue.

XLVII. And for the protection of persons acting in the execution of this Act, be it enacted, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant.

XLVIII. And be it enacted, That nothing in this Act contained shall extend to Scotland or Ireland.

GROUND GAME ACT, 1880.

(43 & 44 Vict. c. 47.)

An Act for the better protection of Occupiers of Land against injury to their Crops from Ground Game. (7th September, 1880.)

Whereas it is expedient in the interest of good husbandry, and for the better security for the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land: Provided that the right conferred on the occupier by this section shall be subject to the following limitations:—

(1) The occupier shall kill and take ground game only by himself or by persons duly authorised by him in writing:

(*a*) The occupier himself and one other person authorised in writing by such occupier shall be the only persons entitled under this Act to kill ground game with firearms;

(*b*) No person shall be authorised by the occupier to kill or take ground game, except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bonâ fide* employed by him for reward in the taking and destruction of ground game;

(*c*) Every person so authorised by the occupier, on

demand by any person having a concurrent right to take and kill the ground game on the land or any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and in default he shall not be deemed to be an authorised person.

(2) A person shall not be deemed to be an occupier of land for the purposes of this Act by reason of his having a right of common over such lands; or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle, or horses for not more than nine months.

(3) In the case of moorlands, and unenclosed lands (not being arable lands), the occupier and the persons authorised by him shall exercise the rights conferred by this section only from the eleventh day of December in one year until the thirty-first day of March in the next year, both inclusive; but this provision shall not apply to detached portions of moorlands or unenclosed lands adjoining arable lands, where such detached portions of moorlands or unenclosed lands are less than twenty-five acres in extent.

2. Where the occupier of land is entitled otherwise than in pursuance of this Act to kill and take ground game thereon, if he shall give to any other person a title to kill and take such ground game, he shall nevertheless retain and have, as incident to and inseparable from such occupation, the same right to kill and take ground game as is declared by section one of this Act. Save as aforesaid, but subject as in section six hereafter mentioned, the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game, in the same manner and to the same extent as if this Act had not passed.

3. Every agreement, condition, or arrangement which purports to divest or alienate the right of the occupier as declared, given, and reserved to him by this Act, or which gives to such occupier any advantage in con-

sideration of his forbearing to exercise such right, or imposes upon him any disadvantage in consequence of his exercising such right, shall be void.

4. The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a license to kill game for the purpose of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the persons authorised by him, as if he had a license to kill game: Provided that nothing in this Act contained shall exempt any person from the provisions of the Gun License Act, 1870.

5. Where at the date of the passing of this Act the right to kill and take ground game on any land is vested by lease, contract of tenancy or other contract *bonâ fide* made for valuable consideration in some person other than the occupier, the occupier shall not be entitled under this Act, until the determination of that contract, to kill and take ground game on such land. And in Scotland when the right to kill and take ground game is vested by operation of law or otherwise in some person other than the occupier, the occupier shall not be entitled by virtue of this Act to kill or take ground game during the currency of any lease or contract of tenancy under which he holds at the passing of this Act, or during the currency of any contract made *bonâ fide* for valuable consideration before the passing of this Act whereby any other person is entitled to take and kill ground game on the land.

For the purposes of this Act, a tenancy from year to year, or a tenancy at will, shall be deemed to determine at the time when such tenancy would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act.

Nothing in this Act shall affect any special right of killing or taking ground game to which any person other than the landlord, lessor, or occupier may have become entitled before the passing of this Act by virtue of any franchise, charter or Act of Parliament.

6. No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise ; and no such person shall, for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison ; and any person acting in contravention of this section shall, on summary conviction, be liable to a penalty not exceeding £2.

7. Where a person who is not in occupation of land has the sole right of killing game thereon (with the exception of such right of killing and taking ground game as is by this Act conferred on the occupier as incident to and inseparable from his occupation), such person shall, for the purpose of any Act authorising the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusiye owner, without prejudice nevertheless to the right of the occupier conferred by this Act.

8. For the purposes of this Act :—

The words " ground game " mean hares and rabbits.

9. A person acting in accordance with this Act shall not thereby be subject to any proceedings or penalties in pursuance of any law or statute.

10. Nothing in this Act shall authorise the killing or taking of ground game on any days or seasons, or by any methods, prohibited by any Act of Parliament in force at the time of the passing of this Act.

11. This Act may be cited for all purposes as the Ground Game Act, 1880.

GROUND GAME (AMENDMENT) ACT, 1906.

(6 Edw. VII. c. 21.)

An Act to amend the Ground Game Act, 1880. (4th August, 1906.)

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Ground Game (Amendment) Act, 1906; and the expressions "occupier" and "ground game" as used in this Act shall have the same meaning as they have in the Ground Game Act, 1880.

2. Notwithstanding anything in section 1, subsection (3), of the Ground Game Act, 1880, contained, the occupier of lands to which that subsection applies shall, without prejudice to his existing rights under that Act, be entitled, between the 1st day of September and the 10th day of December, both inclusive, in any and every year, to exercise the right of killing and taking ground game by the said Act conferred otherwise than by the use of firearms.

3. Section 3 of the Ground Game Act, 1880, shall not apply to prevent the occupier of lands to which section 1, subsection (3), of that Act applies, and the owner of such lands or other persons having a right to take and kill game thereon from making and enforcing agreements for the joint exercise, or the exercise for their joint benefit, of the right to kill and take ground game between the 1st day of September and the 10th day of December, both inclusive, in any or every year.

4. This Act shall come into operation on the 1st day of April, 1907.

AGRICULTURAL HOLDINGS ACT, 1906.

(6 Edw. VII. c. 56.)

An Act to amend the law relating to agricultural holdings. (21st December, 1906.)

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present

Parliament assembled, and by the authority of the same, as follows :—

1.—(1) Subsection (1) of section 1 of the Agricultural Holdings Act, 1900, shall be repealed, and for it substituted :—

> Where a tenant has made on his holding any improvement comprised in the First Schedule to this Act, he shall, subject as in the Agricultural Holdings (England) Act, 1883 (in this Act referred to as "the principal Act"), and in this Act mentioned, be entitled at the determination of a tenancy on quitting his holding to obtain from the landlord, as compensation under the said Acts for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant.

(2) All questions which, under the Agricultural Holdings (England) Acts, 1883 to 1900, or the Agricultural Holdings (Scotland) Acts, 1883 to 1900, or this Act, or under the contract of tenancy, are referred to arbitration, shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement to the contrary, by a single arbitrator, in accordance with the provisions set out in part i. of the second schedule to the Agricultural Holdings Act, 1900, and any sum awarded by such arbitrator to be paid shall be recoverable in manner provided by the Agricultural Holdings (England) Acts, 1883 to 1900, or the Agricultural Holdings (Scotland) Acts, 1883 to 1900, for the recovery of compensation.

(3) The following rule shall be substituted for rule (10) in part i. of the second schedule to the Agricultural Holdings Act, 1900 :—

> The arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or

later than two months after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Board of Agriculture and Fisheries.

2.—(1) Where the tenant has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in any one claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends, and any agreement to the contrary, or in limitation of such compensation, shall be void.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant and a reasonable opportunity is given to the landlord to inspect the damage—

(*a*) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed; and

(*b*) in the case of damage to a crop reaped or raised before it is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.

(3) Where the landlord proves that, under a contract of tenancy made before the commencement of this Act, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such

contract allowance in respect of such damage to an agreed amount was expressly made, the arbitrator shall make such deduction from the compensation which would otherwise be payable under this section as may appear just.

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.

For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black game.

3.—(1) Notwithstanding any custom of the country or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant shall have full right to practise any system of cropping of the arable land on his holding and to dispose of the produce of his holding without incurring any penalty, forfeiture, or liability: Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall in the case of disposal of the produce of the holding consist in the return to the holding of the full equivalent manurial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement:

Provided that this subsection shall not apply—

(*a*) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding; or

(*b*) in any other case, as respects the year before the expiration of the contract of tenancy.

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the

landlord shall without prejudice to any other remedy which may be open to him be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction, or in Scotland an interdict, restraining the exercise of the rights under this section in that manner, and the amount of such damages may, in default of agreement, be determined by arbitration.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in part iii. of the first schedule to the Agricultural Holdings Act, 1900, which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.

(4) In this section the expression "arable land" shall not include land in grass, which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

4. Where the landlord, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates a tenancy by notice to quit, or, after having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so, or where it has been proved that an increase of rent is demanded from the tenant, and that such increase was demanded by reason of an increase in the value of the holding due to improvements which have been executed by or at the cost of the tenant, and for which he has not, either directly or indirectly, received an equivalent from the landlord, and such demand results in the tenant quitting the holding, the tenant upon quitting the holding shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, and notwithstanding any agreement to the contrary, be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, or his implements of husbandry,

produce, or farm stock, on or used in connection with the holding.

Provided that no compensation under this section shall be payable—

(*a*) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid; or

(*b*) unless the tenant has within two months after he has received notice to quit or a refusal to grant a renewal of the tenancy, as the case may be, given to the landlord notice in writing of his intention to claim compensation under this section; or

(*c*) where the tenant with whom a contract of tenancy was made has died within three months before the date of the notice to quit, or in the case of a lease for years before the refusal to grant a renewal; or

(*d*) if the claim for compensation is not made within three months after the time at which the tenant quits the holding.

In the event of any difference arising as to any matter under this section the difference shall, in default of agreement, be settled by arbitration.

5. Section 4 of the Market Gardeners' Compensation Act, 1895, and section 4 of the Market Gardeners' Compensation (Scotland) Act, 1897, shall apply to improvements executed before the dates of the commencement of those Acts respectively in like manner as the sections apply to improvements executed after those dates.

6. The following improvements shall be included in part iii. of the first schedule to the Agricultural Holdings Act, 1900:—Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute:

Provided that the tenant, before beginning to execute

any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

7. If at the commencement of any tenancy entered into after the commencement of this Act either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding shall be made within three months after the commencement of the tenancy by a person to be appointed in default of agreement by the Board of Agriculture and Fisheries, and in default of agreement the cost of making such record shall be borne by the landlord and tenant in equal proportions.

8. The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

9. This Act shall come into operation on the 1st day of January, 1909.

10. This Act may be cited as the Agricultural Holdings Act, 1906, and shall be read and construed and may be cited with the Agricultural Holdings (England) Acts, 1883 to 1900, and the Agricultural Holdings (Scotland) Acts, 1883 to 1900.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
40 & 41 Vict. c. 28.	The Game Laws Amendment (Scotland) Act, 1877.	The whole Act, except sections 1, 10, and 11, and the definition of sheriff in section 3.
63 & 64 Vict. c. 50.	The Agricultural Holdings Act, 1900.	Subsection (1) of section 1. In section 2, the words "by arbitration in accordance with the provisions (if any) in that behalf in any agreement between landlord and tenant, and in default of and subject to any such provisions"; the words "or arbitrators"; the words "An arbitration shall, unless the parties otherwise agree, be before a single arbitrator"; the words "or umpire"; and the words "subject to any provision contained in any agreement between landlord and tenant". Second schedule, part ii.

No. of Page.	Nature of Offence.	Statute under which Proceedings taken.	Where Triable.	Term of Imprisonment, etc.	If Cost of Prosecution Allowed.	As to Bail.	Remarks.
43	Night poaching, after two previous convictions.	9 Geo. IV. c. 69, s. 1.	Quarter Sessions.	Not exceeding 7 years' penal servitude; or not exceeding 2 years' imprisonment.	No.	Discretionary.	Misdemeanour.
„	Night poaching with violence.	„ s. 2.	„	Not exceeding 7 years' penal servitude, nor less than 3 years; or imprisonment not exceeding 2 years (unless count for assault).	„	„	„
„	Night poaching, with violence (three or more).	„ s. 9.	Assizes.	Penal servitude not exceeding 14 years, nor less than 3; or imprisonment not exceeding 2 years.	„	„	„
44	Taking hares or rabbits in warrens by night.	24 & 25 Vict. c. 96, s. 17.	Quarter Sessions.	Fine or imprisonment or both as court thinks fit, with sureties to keep peace and be of good behaviour.	Yes.	„	„
169	Hunting or killing deer (unenclosed park) after previous conviction.	„ s. 12.	„	Not exceeding 2 years. If male under 16 may be whipped.	„	„	Felony.
„	Coursing, wounding, etc., deer in enclosed land.	„ s. 13.	„	„	„	„	„
170	Assaulting deer keeper.	„ s. 16.	„	„	„	„	„
171	Stealing swans.	Common Law.	„	Not exceeding 5 years.	„	„	„

TABLE OF SUMMARY OFFENCES, WITH STATUTES AND FINES.

No. of Page.	Nature of Offence.	Statute under which Proceedings taken.	Where Triable.	Fine not Exceeding	Imprisonment in Default of Payment.	If Distress follows.	If any Appeal.	If Imprisonment without Option of Fine.	Time within which Proceedings must be commenced.
46	Trespass in search of game, etc.	1 & 2 Wm. IV. c. 32, s. 30.	Court of Summary Jurisdiction (Justices in Petty Sessions).	£2.	According to scale in Summary Jurisdiction Act. If penalty and costs do not exceed 10s., 7 days; 10s. and under £1, 14 days; £1 and under £5, 1 month; £5 and under £20, 2 months; exceeding £20, 3 months.	No.	Yes.	——	3 Mths.
46	Trespass in search of game, etc. (five or more).	,,	,,	£5 each.	,,	,,	,,	——	,,
49	Trespassers not giving correct name, etc.	1 & 2 Wm. IV. c. 32, s. 31.	,,	£5.	,,	,,	,,	——	,,
57	Trespassers in day-time to number of 5 or more armed and using violence, etc.	1 & 2 Wm. IV. c. 32, s. 32.	,,	£5.	,,	,,	,,	——	,,

58	Coming from land with game, etc., in possession.	25 & 26 Vict. c. 114, s. 2.	„	£5 and forfeiture of game, nets, etc.	„	„	„	—	„
62	Using firearms for taking ground game at night.	43 & 44 Vict. c. 47, s. 6.	„	£2.	„	„	„	—	6 Mths.
„	Trapping other than in rabbit holes or employing poison.	„	„	„	„	Yes.	„	—	„
84	Tenants killing game when sporting reserved.	1 & 2 Wm. IV. c. 32, s. 12.	„	£2 and £1 a-head of game.	„	No.	„	—	„
65	Killing, etc., game on Sunday.	1 & 2 Wm. IV. c. 32, s. 3.	„	£5.	„	„	„	—	3 Mths.
„	Killing or taking game out of season.	„	„	£1 each head of game.	„	„	„	—	„
67	Killing or taking game without certificate.	1 & 2 Wm. IV. c. 32, s. 23.	„	£5.	„	„	„	—	„
64	Laying poison to destroy game.	1 & 2 Wm. IV. c. 32, s. 3.	„	£10.	„	„	„	—	„
76	Taking eggs from nest, etc.	1 & 2 Wm. IV. c. 32, s. 24.	„	5s. an egg.	„	„	„	—	„
70	Selling or exposing hares for sale out of season.	55 Vict. c. 8, s. 2.	„	£1 including costs.	„	Yes.	„	—	6 Mths.
85	Night poaching.	9 Geo. IV. c. 69, s. 1.	„	£25.	„	„	„	3 months and sureties; 2nd offence, 6 months and sureties.	„
124	Aiders and abetters.	Same as principal offenders.							

TABLE OF SUMMARY OFFENCES, WITH STATUTES AND FINES—(*Continued*).

No. of Page.	Nature of Offence.	Statute under which Proceedings taken.	Where Triable.	Fine not Exceeding	Imprisonment in Default of Payment.	If Distress follows.	If any Appeal.	If Imprisonment without Option of Fine.	Time within which Proceedings must be commenced.
75	Day poaching in warrens.	24 & 25 Vict. c. 96, s. 17.	Court of Summary Jurisdiction (Justices in Petty Sessions).	£5.	According to scale in Summary Jurisdiction Act. If penalty and costs do not exceed 10s., 7 days; 10s. and under £1, 14 days; £1 and under £5, 1 month; £5 and under £20, 2 months; exceeding £20, 3 months.	No.	Yes.	——	6 Mths.
169	Coursing deer in unenclosed part of forest, etc. (first offence).	24 & 25 Vict. c. 96, s. 12.	„	£50.	„	„	„	——	„
„	Unlawful possession of deer.	24 & 25 Vict. c. 96, s. 14.	„	£20.	„	„	„	——	„
„	Using snares for taking deer.	24 & 25 Vict. c. 96, s. 15.	„	„	„	„	„	——	„
71	Selling or offering game without license.	1 & 2 Wm. IV. c. 32, s. 25.	„	£2 per head.	„	„	„	——	3 Mths.

72	Buying game without license from unlicensed person.	1 & 2 Wm. IV. c. 32, s. 27.	„	£5 a head.	„	„	„	—	„
„	Licensed dealer buying or selling or in possession during close season.	1 & 2 Wm. IV. c. 32, s. 4.	„	£1 a head.	„	„	„	—	„
94	Shooting wild birds under Protection Act.	43 & 44 Vict. c. 35, s. 3.	„	Scheduled, £1 each bird and forfeiture of bird, and if not scheduled, reprimand; subsequent offence, 5s.	„	Yes.	„	—	„
96	Refusing to give name, etc.	43 & 44 Vict. c. 35, s. 4.	„	10s. in addition to above.	„	„	„	—	„
110	Killing, etc., animal, etc., subject of larceny at Common Law.	24 & 25 Vict. c. 97, s. 41.	„	£20 over and above injury.	„	No.	„	2nd offence 12 Mths.	6 Mths.
112	Killing or stealing animal, etc., not subject of larceny at Common Law.	24 & 25 Vict. c. 96, s. 21.	„	£20 and value of animal.	„	„	„	—	„
„	Possession of skin, of, etc.	24 & 25 Vict. c. 96, s. 22.	„	„	„	„	„	—	„
111	Causing unnecessary suffering to wild animal in captivity.	63 & 64 Vict. c. 33, s. 2.	„	£5.	„	„	„	—	6 Mths.

If imprisonment exceeds three months, defendant must have option of trial by jury.
The above offences of buying and selling game are irrespective of the Excise penalties provided.

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